

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

TUESDAY,

SEPTEMBER 26, 2006

+ + + + +

The Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 9:30 a.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS	Chairperson
RUTHANNE G. MILLER	Vice-Chairperson
CURTIS ETHERLY, JR.	Board Member
JOHN A. MANN, II	Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

MICHAEL TURNBULL	Commissioner
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OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY	Secretary (BZA)
BEVERLY BAILEY	Sr. Zoning Specialist
JOHN NYARKU	Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL:

SHERRY GLAZER, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

MATT JESICK
STEPHEN MORDFIN

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This transcript constitutes the minutes
from the Public Hearing held on September 26, 2006.

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WELCOME:

Geoffrey Griffis 4

PRELIMINARY MATTER:

Application No. 17460 Withdrawn: 7

JEFFREY SNEIDER

APPLICATION NO. 17516 - ANC-2E: 8

WITNESS:

Outerbridge Horsey 9

OFFICE OF PLANNING:

Steven Mordfin 11

ANC-2E REPORT - EXHIBIT 22: 12

MOTION TO APPROVE APPLICATION 17516: 13

VOTE TO APPROVE APPLICATION 17516: 14

ABDUL KAMARA

APPLICATION NO. 17515 - ANC-7E: 15

WITNESS:

Ike Agbim 16

ANC-7E:

Naomi Robinson 30

OFFICE OF PLANNING:

Matthew Jesick 40

SPECIFICALLY REQUESTED MATERIAL: 47

SET FOR DECISION ON OCTOBER 3RD: 54

JONATHAN GOTTLIEB:

APPEAL NO. 17502 - ANC-3D:

REQUEST FOR CONTINUANCE: 59

MOTION TO DENY REQUEST FOR CONTINUANCE: 111

VOTE TO DENY REQUEST FOR CONTINUANCE: 112

REQUEST TO DISMISS: 114

MOTION TO GRANT DISMISSAL: 140

VOTE TO GRANT DISMISSAL: 148

ADJOURN:

Geoffrey Griffis 149

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P-R-O-C-E-E-D-I-N-G-S

9:51 a.m.

CHAIRPERSON GRIFFIS: Good morning, ladies and gentlemen. Let me call to order the 26th of September 2006 Public Hearing of the Board of Zoning Adjustment of the District of Columbia. My name is Geoff Griffis, Chairperson. Joining me today is Ms. Miller, Vice Chair, and representing the National Capital Planning Commission with us is Mr. Mann, representing the Zoning Commission with us this morning is Mr. Turnbull.

Mr. Etherly our other esteemed colleague and Board Member will be joining us shortly. He has been a little bit delayed out on the road. However, we're going to proceed with our agenda this morning and he will step in as and when he arrives.

Copies of today's hearing agenda are available for you. They are located at the table where you entered into the hearing room. You can pick it up and figure out where you are on the chronology.

We will be calling the cases in order of their publication on that schedule. It is very important that you know a couple of things. In my opening remarks, I'm going to go very quickly, so if there are questions, of course, you can just raise your hand and

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1 I will clarify.

2 However, it should be noted that all
3 proceedings before the Board of Zoning Adjustment are
4 recorded. They are recorded in two fashions. The
5 most exciting, of course, is the Court Reporter, who
6 is sitting on our floor to the right, creating the
7 official transcript. We are also being broadcast on
8 the Office of Zoning's website.

9 Attendant to both of those, there are
10 several things that we ask. First, before coming
11 forward to speak to the Board, I would ask that you
12 fill out two witness cards. Witness cards should be
13 available for you at the table close to the door.
14 They are also available where you will provide your
15 testimony. Two cards go to the recorder prior to
16 coming forward to speak to the Board.

17 When that is done and you are ready to
18 address the Board in your case, you can come forward,
19 have a seat at the table, make yourself comfortable.
20 You will need to state your name and address once for
21 the record, obviously, then we can give you all credit
22 on the transcript for that important information that
23 you will provide the Board.

24 The order of procedure for special
25 exceptions and variances is as follows: First, we

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1 will hear from the applicant. Second, we will hear
2 any Government reports attendant to the application.
3 Third, we will hear from the ANC within which the
4 property is located. Fourth, we will hear persons or
5 parties in support of an application. Fifth would be
6 persons or parties in opposition to the application.
7 And, sixth, finally, we will return to the applicant
8 for any additional testimony, rebuttal testimony
9 and/or closing remarks or summations.

10 Cross examination is permitted by the
11 applicant, parties and the ANC. I will go through
12 specific instruction on cross examination, if it
13 warrants during a specific application.

14 The Sunshine Act requires that we hold all
15 our hearings in the open and before the public. Our
16 rules and regulations allow us to enter into Executive
17 Session for deliberating and/or just reviewing records
18 on cases and we do that once in a while and it is in
19 accordance with the Sunshine Act.

20 However, the decision of the Board must be
21 based exclusively on the public record that is created
22 before us today. So attendant to that, we ask two
23 things. First, that you make sure that all the
24 information that you think is germane and important
25 for the record be put into the record, either orally

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1 in your testimony or in writing, and secondly, we ask
2 that during recesses, breaks or at any time during our
3 hearings that you do not engage Board Members in
4 private conversation. This would, of course, give the
5 appearance of receiving information outside of the
6 public record.

7 With that, those are my instructions and I
8 want to say a very good morning to Ms. Bailey on my
9 very far left, Ms. Glazer with the Office of the
10 Attorney General is with us, Mr. Moy with the Office
11 of Zoning is also with us in and out. I would ask,
12 Ms. Bailey, if you are aware of any preliminary
13 matters for the Board's attention this morning?

14 MS. BAILEY: Mr. Chairman, Members of the
15 Board and to everyone, good morning.

16 CHAIRPERSON GRIFFIS: Good morning.

17 MS. BAILEY: There is, Mr. Chairman, and I
18 just wanted to make sure the record reflects that
19 Application No. 17460 of GKD 1412 Chapin Street, N.W.
20 -- I'm sorry, 1412 Chapin Street, LLC, that
21 application was withdrawn, Mr. Chairman.

22 CHAIRPERSON GRIFFIS: Excellent. Thank
23 you. Then there is no Board action required on that.

24 MS. BAILEY: That is correct.

25 CHAIRPERSON GRIFFIS: We appreciate that.

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1 Very well. Are there any other preliminary matters
2 that you are aware of?

3 MS. BAILEY: Other than swearing in the
4 witnesses, Mr. Chairman, that's it.

5 CHAIRPERSON GRIFFIS: Good. Let me ask if
6 anyone here is present that has preliminary matters
7 for the Board's attention? Preliminary matters are
8 those which relate to whether a case will or should
9 proceed today, if proper notice or for any reason you
10 don't believe an application on our schedule should
11 not proceed, you can come forward and let us know.
12 Not noting any indication of any preliminary matters,
13 I'm going to ask for all those that are going to
14 address the Board this morning if you would, please,
15 stand and give your attention to Ms. Bailey. She is
16 going to swear you in.

17 (Whereupon, the witnesses were sworn.)

18 MS. BAILEY: Thank you.

19 CHAIRPERSON GRIFFIS: Excellent. Thank
20 you all very much. With that then, let's call the
21 first case.

22 MS. BAILEY: Application No. 17516 of
23 Jeffrey Sneider, pursuant to 11 DCMR 3104.1, for a
24 special exception to allow a rear addition to an
25 existing single-family row dwelling under section 223,

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1 not meeting the lot occupancy requirements, that's
2 section 403. The property is Zoned R-3 and it's
3 located at 3265 N Street, N.W., Square 1230, Lot 821.

4 CHAIRPERSON GRIFFIS: Good morning.

5 MR. HORSEY: Good morning, Mr. Chairman,
6 Members of the Board. My name is Outerbridge Horsey.

7 My address is 1228 1/2 31st Street, N.W., Washington,
8 D.C. 20007. I'm here representing Jeffrey Sneider,
9 the owner of 3265 N Street. Mr. Sneider is in the
10 audience to my left. We are here to request the
11 Board's review and approval of a 6 percent variance
12 for the lot occupancy for a row house in historic
13 Georgetown.

14 CHAIRPERSON GRIFFIS: Excellent. And I
15 must say the record is entirely full on this, but let
16 me just ask you a couple of quick questions.

17 MR. HORSEY: Sure.

18 CHAIRPERSON GRIFFIS: Is it your
19 understanding the Office of Planning is also
20 recommending approval?

21 MR. HORSEY: Yes. I got that notice
22 yesterday.

23 CHAIRPERSON GRIFFIS: This has also been
24 through Georgetown Historic Board, the old Georgetown
25 Board and also was approved?

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1 MR. HORSEY: Correct.

2 CHAIRPERSON GRIFFIS: And is there any
3 opposition that you are aware of on this?

4 MR. HORSEY: No.

5 CHAIRPERSON GRIFFIS: Any concerns in your
6 discussing with the area regarding the 223
7 requirements for this addition?

8 MR. HORSEY: No. We discussed it with
9 both neighbors, with three neighbors that are
10 affected. Two of them have written letters in support
11 of the special exception. The third one gave his
12 initial approval, but we did not find a letter.

13 CHAIRPERSON GRIFFIS: Excellent. Noting
14 letter of support, Exhibit 25, 21 and also 20. Is
15 there anything that has arose in your workings of this
16 that led you to believe that this would somehow impair
17 the light, air or privacy and use of the adjacent
18 properties?

19 MR. HORSEY: The only person affected is
20 the -- this is an apartment building on the corner,
21 similar in construction to my client's building. The
22 only window that's really affected is this one back in
23 here and it serves on -- it serves a bathroom at the
24 back of this unit and this particular property owner
25 has referred to this. I'm sorry. It's this small

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1 window that's impacted by the addition. This large
2 building isn't really impacted.

3 CHAIRPERSON GRIFFIS: Well, is your
4 testimony that it would or would not unduly compromise
5 the use?

6 MR. HORSEY: Not unduly, no, no, no.

7 CHAIRPERSON GRIFFIS: Okay. Anything else
8 you would like to summarize for us in this
9 application?

10 MR. HORSEY: I think that's it.

11 CHAIRPERSON GRIFFIS: Excellent.

12 MR. HORSEY: That's all.

13 CHAIRPERSON GRIFFIS: Thank you very much.

14 Let's move on to the Office of Planning then. A very
15 good morning to you. An excellent report. We do
16 appreciate it. If there is anything you would like to
17 summarize or take the whole time you would like or you
18 can stand on the record.

19 MR. MORDFIN: Good morning, Chair and
20 Members of the Board. I'm Stephen Mordfin with the
21 Office of Planning and the Office of Planning stands
22 on the record.

23 CHAIRPERSON GRIFFIS: Excellent. Thank
24 you very much. Again, an excellent report. We do
25 appreciate it. It's very thorough in its analysis.

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1 Mr. Horsey, do you have any cross examination of the
2 Office of Planning?

3 MR. HORSEY: I do not, sir.

4 CHAIRPERSON GRIFFIS: Any questions from
5 the Board of the Office of Planning? I would note
6 again, of course, that it is Exhibit No. 23 and they
7 are recommending approval of this application. Let's
8 move ahead then. We have noted as opening and also in
9 the record that the Georgetown Board had reviewed and
10 approved this. Is the ANC-2E present? Is a member of
11 the ANC present? Not noting any member, we note
12 Exhibit 22, it's September 5, 2006. The ANC-2E voted
13 not to object to the application.

14 I don't have any other attendant
15 Government reports to this application, unless the
16 applicant is aware of any others or Board Members are
17 aware of any others. Very well. Let's move ahead
18 then to any persons present in Application 17516 in
19 support of the application to provide testimony. Is
20 anyone here to provide testimony? Persons in
21 opposition to 17516?

22 Very well. Not noting, I'll turn it over
23 to you for any closing remarks you might have.

24 MR. HORSEY: No, I thank you for your
25 review and look forward to your decision.

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1 CHAIRPERSON GRIFFIS: Excellent. Thank
2 you very much. I think this record, as I started out,
3 is very full and it's appropriate to stand on the
4 record, which we have actually kind of forced you
5 into. But I have noted that and unless the Board has
6 additional questions of the applicant, we could take
7 those now. Any questions, clarifications?

8 It's very clear on what's happening here
9 and I think this is without taking a lot of time my
10 normal stump speech of the importance and the critical
11 aspect of section 223 of the Zoning Regulations. This
12 obviously fits straight into it. And running through
13 and I think we can rely substantially on the
14 submissions by the applicant, but also on the Office
15 of Planning's analysis, which breaks out the 223
16 requirements, which we have orally touched on and also
17 in the written submission.

18 I would move approval of Application 17516
19 for a special exception allowing the rear addition to
20 the existing single-family row dwelling not meeting
21 the lot occupancy requirements at 3265 N Street, N.W.,
22 and ask for a second.

23 BOARD MEMBER MANN: Second.

24 CHAIRPERSON GRIFFIS: Thank you very much,
25 Mr. Mann. I appreciate it. Again, I don't think I

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1 need to walk through the entire piece of this.
2 However, there has been no evidence that has arisen to
3 the fact that this would unduly impair the use and
4 privacy, certainly, the light and air to the adjacent
5 properties. It's actually interesting. If we really
6 were to spend more time on it, an interesting kind of
7 lot scenario and the addition.

8 I don't think it serves us well to take a
9 lot of time getting into it, but I think one of the
10 requirements, of course, of 223 is to properly
11 represent through graphic representation and drawings
12 what is being proposed and what is existing. And this
13 does it very well. Enough to the fact that I don't
14 think we actually need to get much into further
15 questioning.

16 I'll open it up for others for
17 deliberation, comments. Very well. If there's no
18 other further comments to this, we do have a motion
19 before us. It has been seconded. I would ask for all
20 those in favor to signify by saying aye.

21 ALL: Aye.

22 CHAIRPERSON GRIFFIS: And opposed?
23 Abstaining? Very well. Ms. Bailey, why don't we
24 record the vote?

25 MS. BAILEY: Mr. Chairman, the vote is 4-

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1 0-1 to approve the application. Mr. Griffis made the
2 motion, Mr. Mann second, Mrs. Miller, Mr. Turnbull
3 supports the motion and Board Member Etherly is not
4 present at this time.

5 CHAIRPERSON GRIFFIS: Excellent. I don't
6 see any reason why we wouldn't waive our rules and
7 regulations and issue a summary order on this, unless
8 there is any objection from the Board Members or the
9 applicant. Not noting any objections, why don't we
10 issue a summary order?

11 MS. BAILEY: Thank you, sir.

12 CHAIRPERSON GRIFFIS: Thank you very much.
13 Mr. Horsey, thank you very much.

14 MR. HORSEY: Thank you, Mr. Chairman.

15 CHAIRPERSON GRIFFIS: Have a pleasant day.

16 MR. HORSEY: Members of the Board.

17 CHAIRPERSON GRIFFIS: And good luck.

18 MR. HORSEY: Thank you.

19 CHAIRPERSON GRIFFIS: Why don't we move
20 ahead?

21 MS. BAILEY: Application No. 17515 of
22 Abdul Kamara, pursuant to 11 DCMR 3104.1, for a
23 special exception to construct a four unit apartment
24 building under section 353. The property is Zoned R-
25 5-A and it's located at 5031 B Street, S.E., Square

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1 5325, Lot 10.

2 CHAIRPERSON GRIFFIS: Good morning. If
3 you wouldn't mind turning your microphone on. Just
4 touch the button there. Perfect.

5 MR. AGBIM: All right.

6 CHAIRPERSON GRIFFIS: And just state your
7 name and address for the record, please.

8 MR. AGBIM: My name is Ike Agbim, 1300
9 Mercantile Lane, Largo, Maryland 20774.

10 CHAIRPERSON GRIFFIS: Excellent. And
11 you're the architect representing the applicant in
12 this?

13 MR. AGBIM: Yes.

14 CHAIRPERSON GRIFFIS: Excellent. And we
15 have revised drawings, is that correct, September 20?

16 MR. AGBIM: Yes, sir.

17 CHAIRPERSON GRIFFIS: Okay. I'll turn it
18 over to you for openings.

19 MR. AGBIM: Okay. Thank you very much,
20 Board and public. This project is for a single
21 building and a vacant lot. It's Zoned R-5-A currently
22 and it's on the 5000 Block of B Street, S.E. The
23 proposal is for a four unit for sale condominium
24 building that will be articulated on this project
25 site. This block, the block that this building is

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1 proposing is predominantly apartments. As a matter of
2 fact, all the buildings on that same side of the
3 street are apartment buildings, except one, which is
4 the building next door, which is a single-family
5 building.

6 The proposal is for four units, like I
7 said earlier, with four parking spaces and the project
8 meets all requirements of Title IV. The requirement
9 is for, you know, this special exception, since this
10 is an R-5-A Zone to show that there is a consistence
11 in the project design with the existing or majority of
12 the existing buildings in the block. And through the
13 architectural design of this project, we have
14 physically designed a building to be consistent with
15 the buildings on the same block, on the same side of
16 the street.

17 We were hoping that if this application is
18 approved, that this will benefit and contribute to the
19 District's Plan, Comprehensive Plan for Ward 7, which
20 is mainly a provision of affordable housing as well as
21 home ownership opportunities for medium income people.

22 Thank you very much.

23 CHAIRPERSON GRIFFIS: Excellent. Thank
24 you very much. 353, which you are under, of course,
25 is a special exception and it refers us, however, to

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1 the requirements of 410 in the regulations. So let me
2 just walk through a couple of questions with you.

3 MR. AGBIM: Sure.

4 CHAIRPERSON GRIFFIS: And, you know, it's
5 interesting because the regulations are written as if
6 in this R-5 Zone you are building multiple buildings.

7 So some of these don't really make a lot of sense,
8 but am I correct that your buildings and the group of
9 buildings should be erected simultaneously, that would
10 be moot. Front entrances abut the street, front yard
11 or front porch. Is that correct?

12 MR. AGBIM: Yes.

13 CHAIRPERSON GRIFFIS: All right. Yes, I
14 don't really see a lot of these that we need to spend
15 time on.

16 VICE CHAIR MILLER: Yes, I don't see
17 either.

18 CHAIRPERSON GRIFFIS: Okay. I noted the
19 revised drawing. Why don't we walk through a little
20 bit. I know Office of Planning is going to talk
21 probably a little bit more about this, but in terms of
22 the particular attention to the landscaping and how
23 this building sets in, do you want to just walk us
24 through what you are proposing? Do you have a curb
25 cut and a drive aisle up to the four parking spaces?

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1 MR. AGBIM: Right.

2 CHAIRPERSON GRIFFIS: In back.

3 MR. AGBIM: Yes.

4 CHAIRPERSON GRIFFIS: And then you have a
5 small side yard?

6 MR. AGBIM: Right. This project has one
7 curb cut to provide the required parking spaces in the
8 rear of the project, which is four, one for each of
9 the four units of the building. And what we have done
10 is we have articulated the building to maintain
11 statutory side yard requirements. We have 9 foot side
12 yard on both sides of the project.

13 Now, because the side slopes rapidly to
14 the southeast corner, we have had to use a retaining
15 wall to prevent water runoff from this project site to
16 the next property at 5043 B Street, which is a much
17 lower ground. So that retaining wall gives us an
18 opportunity to gradually take care of the water on the
19 site through an area drain in the parking lot and
20 through a minor slope to swales that go through the
21 right side of the building. That area we have
22 landscaped adequately to make sure there is no erosion
23 problems in that area.

24 There is also a trash enclosure that's
25 sort of hidden inside the landscaping on the right

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1 side of the building.

2 CHAIRPERSON GRIFFIS: Which side is the
3 trash enclosure? Oh, I see. It's on the side yard.

4 MR. AGBIM: It's on the west side, right.

5 CHAIRPERSON GRIFFIS: Right. And so how
6 does that function?

7 MR. AGBIM: The trash?

8 CHAIRPERSON GRIFFIS: Yes, the trash
9 trucks pull off on the -- at the curb?

10 MR. AGBIM: Well, usually what happens in
11 this situation for a small building, the trash truck,
12 small trash collecting truck pulls up and they walk up
13 to it, open the gates and pull the bags of trash out
14 and then load it onto the truck and drive away.

15 CHAIRPERSON GRIFFIS: I see. Okay. Okay.
16 Okay. Any other questions?

17 VICE CHAIR MILLER: I have questions.

18 CHAIRPERSON GRIFFIS: Yes, go ahead.

19 VICE CHAIR MILLER: I think that you said
20 that this building was going to be consistent with the
21 other buildings on the street, on that side of the
22 street and I'm wondering, is there something across
23 the street?

24 MR. AGBIM: Well, across the street is
25 mostly vacant lot. There are, however, two single-

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1 family dwellings on opposite side of the street and
2 those -- but there are a total of three single-family
3 dwellings in this block all along B Street between 50
4 and 51st. The rest of the buildings there are
5 apartment buildings, 12 units, 9 units, 16 units and
6 so on and so forth.

7 So what I meant to say was the majority.
8 The majority of the buildings on the block are, you
9 know, brick, cube-style apartment buildings.

10 VICE CHAIR MILLER: And you also mentioned
11 that these were going to be affordable units. And how
12 do we know that they are going to be affordable units?

13 MR. AGBIM: Well, the current pricing that
14 we have for those units, you mean as they are sold,
15 between now and May of next year will meet -- will
16 make it easy for any person in 60 to 80 percent of the
17 median, average median income for the area to afford.

18 So that's a price range of between \$175 to \$200,000
19 for the two bedroom units.

20 VICE CHAIR MILLER: So that's the price
21 you're setting it at.

22 MR. AGBIM: Yes, ma'am.

23 VICE CHAIR MILLER: But how do we know
24 that won't go higher if there was a demand for it or
25 is there not in that area?

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1 MR. AGBIM: Generally, the market forces
2 stay the same, which one can easily project for next
3 six months. We are very confident that the project
4 can be delivered at that level.

5 VICE CHAIR MILLER: Okay. And I think
6 there was a question about the retaining wall with
7 Office of Planning.

8 MR. AGBIM: Right, right.

9 VICE CHAIR MILLER: And so you have
10 decreased it in height. Is that correct?

11 MR. AGBIM: Yes, yes. We did a lot of
12 articulation and initially the concern was the height
13 of the wall above the neighbor's property. And we
14 worked the grade in the area to maintain positive
15 drainage out of the site into an area drain, but at
16 the same time lowered the wall down, so that the
17 impact of the wall wouldn't be felt as much. In
18 addition, we changed the finish of that wall, so that
19 the wall can be constructed of split face
20 architecture, split face blocks, which is more
21 pleasing to the eye than a big concrete wall.

22 VICE CHAIR MILLER: Okay. And why is the
23 height -- you have it at 4 feet now?

24 MR. AGBIM: It's at 4 feet at the highest
25 point.

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1 VICE CHAIR MILLER: Okay.

2 MR. AGBIM: And the highest point is
3 basically on the southeast corner for about 10 feet.

4 VICE CHAIR MILLER: And what's the rest of
5 it?

6 MR. AGBIM: The rest of it tapers down.

7 VICE CHAIR MILLER: Gradually?

8 MR. AGBIM: Right. Tapers down to 3 feet
9 and so on.

10 VICE CHAIR MILLER: Okay. Thank you.

11 MR. AGBIM: All right.

12 CHAIRPERSON GRIFFIS: Yes, Mr. Turnbull?

13 COMMISSIONER TURNBULL: Mr. Chairman,
14 thank you. I just want to get back to the trash
15 route, the trash enclosure. You said they pull out
16 the bags, but there is a receptacle in there? Is
17 there a metal box?

18 MR. AGBIM: What it is is a 4 foot high
19 fenced area that will contain, would house individual
20 trash containers, one for each unit. And what happens
21 is that enclosure has a gate and when the gate gets
22 opened up, the trash collection person can pull the
23 trash from those bins and put in the truck.

24 COMMISSIONER TURNBULL: So they don't
25 wheel out?

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1 MR. AGBIM: They can actually wheel it.

2 COMMISSIONER TURNBULL: Okay.

3 MR. AGBIM: We have provided pavers in
4 front to soften the landscape in the area as well as
5 provide some hardscaping.

6 COMMISSIONER TURNBULL: How high is the
7 enclosure again?

8 MR. AGBIM: It's I believe 4 feet.

9 COMMISSIONER TURNBULL: It looks it says 3
10 feet here, but I'm not -- I can't read it.

11 MR. AGBIM: Right, right.

12 COMMISSIONER TURNBULL: It looks like on
13 the plan, the landscape plan it shows 3 feet. What
14 kind of an enclosure is that? Is that a wooden fence?

15 MR. AGBIM: It's a metal enclosure with a
16 metal grated floor. The floor is actually grated, so
17 that it doesn't preclude any landscaping below. Below
18 that enclosure, we're going to have gravel to finish
19 off that area.

20 COMMISSIONER TURNBULL: So is that only a
21 cyclone fence then around it?

22 MR. AGBIM: Right. It's just a fence, no
23 roof or anything.

24 COMMISSIONER TURNBULL: Are there any
25 other kinds of -- is there an air conditioning pad or

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1 anything out here? I don't see anything indicated
2 mechanically.

3 MR. AGBIM: Yes, the air conditioning
4 parts will be on the roof, sir.

5 COMMISSIONER TURNBULL: They are on the
6 roof?

7 MR. AGBIM: Right.

8 COMMISSIONER TURNBULL: Okay. What about
9 lighting in the parking lot?

10 MR. AGBIM: Well, what we have done
11 basically, it's not shown on any plans, but through
12 positioning lights on the building, we feel that we
13 can provide sufficient lighting for the rear and the
14 sides and also the front.

15 COMMISSIONER TURNBULL: There is lights on
16 the back of the building?

17 MR. AGBIM: Yes. However, that's not
18 currently shown on the -- we only show the lighting in
19 the front right now, but the intention is to have
20 lighting on all sides of the building to shed light on
21 the parking lot and the side yards.

22 COMMISSIONER TURNBULL: I mean, are you --
23 are these mounted high on the building? Are you
24 flooding the parking lot?

25 MR. AGBIM: Right. They are just going to

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1 be lighting specifically for the parking areas.

2 COMMISSIONER TURNBULL: Mr. Chairman, I
3 think, I might have a little problem. I think there
4 might be some issues with flooding the parking lot. I
5 think, especially, for the neighbors it might be a
6 concern.

7 CHAIRPERSON GRIFFIS: Sure. Understood.
8 Have you picked the light fixtures yet?

9 MR. AGBIM: No.

10 CHAIRPERSON GRIFFIS: Okay.

11 COMMISSIONER TURNBULL: Yes, I think
12 something a little bit more sensitive.

13 MR. AGBIM: But we can let you select the
14 light fixtures that will not be a problem, will not be
15 -- affect the neighbors adversely.

16 COMMISSIONER TURNBULL: How high does the
17 mechanical -- there is nothing showing on your
18 elevations that show the mechanical on the roof. How
19 high do they stick up or how big are these?

20 MR. AGBIM: Yes, they are probably about
21 2.5 feet high.

22 COMMISSIONER TURNBULL: Okay.

23 MR. AGBIM: So from the ground in
24 perspective, they will probably not be seen from --
25 somebody walking on the street wouldn't be able to see

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1 them.

2 COMMISSIONER TURNBULL: So there is four
3 of them, one for each unit?

4 MR. AGBIM: Right.

5 COMMISSIONER TURNBULL: Okay. I guess my
6 big thing right now is on the lighting. We addressed
7 that.

8 CHAIRPERSON GRIFFIS: Good.

9 COMMISSIONER TURNBULL: Thank you.

10 CHAIRPERSON GRIFFIS: Thank you. Other
11 questions?

12 VICE CHAIR MILLER: Could you just clarify
13 for me what does the parking back up to? What is
14 behind the parking?

15 MR. AGBIM: On the west side?

16 CHAIRPERSON GRIFFIS: And the rear. Is
17 there any alley in the rear?

18 VICE CHAIR MILLER: In the right, right.

19 MR. AGBIM: No, there is no alley.

20 CHAIRPERSON GRIFFIS: Right. So it abuts
21 the adjacent single-family home?

22 MR. AGBIM: There is another lot. Right.

23 VICE CHAIR MILLER: Okay. Thank you.

24 CHAIRPERSON GRIFFIS: Here. See the file
25 shows this. It might be better than anything we have.

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1 VICE CHAIR MILLER: We got that.

2 CHAIRPERSON GRIFFIS: Yes, but you can't
3 see it. It's black and white. Those are color.
4 We'll pass it on down. Okay. Any other questions at
5 this point? Let me ask you, is there a grade change
6 in those pavers going up to the trash enclosure area?

7 MR. AGBIM: Is there a what?

8 CHAIRPERSON GRIFFIS: Is there a grade
9 change? Does it slope a little bit?

10 MR. AGBIM: Very minimal.

11 CHAIRPERSON GRIFFIS: It does.

12 MR. AGBIM: Right.

13 CHAIRPERSON GRIFFIS: Okay. And the area
14 of enclosure, what's the surface? Are you treating
15 the surface at all?

16 MR. AGBIM: Well, like I mentioned, the
17 area, the fence sits on posts and the fence is -- the
18 enclosure, it has a grated floor.

19 CHAIRPERSON GRIFFIS: Oh, it has a what --

20 MR. AGBIM: It is raised.

21 CHAIRPERSON GRIFFIS: -- kind of floor?

22 MR. AGBIM: It's grated. It's a grate.

23 CHAIRPERSON GRIFFIS: Okay.

24 MR. AGBIM: It's a metal grate. It's a
25 metal grate. The floor is metal grate.

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1 CHAIRPERSON GRIFFIS: Oh, I see.

2 MR. AGBIM: And that floor is raised off
3 the ground by about 9 inches.

4 CHAIRPERSON GRIFFIS: Why do you do that?

5 MR. AGBIM: Well, the -- usually in these
6 areas sometimes there is problem of pests.

7 CHAIRPERSON GRIFFIS: Uh-huh.

8 MR. AGBIM: And this is one of the ways
9 that that problem can be addressed. When you raise it
10 off the floor, it gives an opportunity -- it's easier
11 to clean. And because it's a grate, it's a removable
12 grate --

13 CHAIRPERSON GRIFFIS: Sure.

14 MR. AGBIM: -- that can be removed,
15 cleaned and replaced. That sits on metal angles all
16 around the enclosure.

17 CHAIRPERSON GRIFFIS: Interesting.

18 MR. AGBIM: Right.

19 CHAIRPERSON GRIFFIS: Okay. Would it be
20 the same if you just poured a pad, concrete pad? You
21 could hose that down.

22 MR. AGBIM: Right. That can be hosed
23 down, too, right.

24 CHAIRPERSON GRIFFIS: Okay. And did you
25 think about that?

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1 MR. AGBIM: Well, when we do it, a pad can
2 be used, but the enclosure, the walls of the enclosure
3 can then be raised off the pad to provide that
4 ventilation. But, you know, these are some of the
5 choices that one has to, you know, use for this type
6 of enclosure.

7 CHAIRPERSON GRIFFIS: Right. Okay.
8 Interesting. All right. Good. Anything else?
9 Questions at this point? If there's nothing further,
10 let's move ahead. Anything else you would like to
11 point our attention to, at this time?

12 MR. AGBIM: No, not at this time.

13 CHAIRPERSON GRIFFIS: Okay.

14 MR. AGBIM: All right.

15 CHAIRPERSON GRIFFIS: Let me ask, is the
16 ANC present? Is a representative of the ANC here?

17 MS. ROBINSON: Here.

18 CHAIRPERSON GRIFFIS: Do you have any
19 cross examination questions of the applicant?
20 Questions?

21 MS. ROBINSON: Yes.

22 CHAIRPERSON GRIFFIS: Excellent. Why
23 don't you come forward?

24 MS. ROBINSON: Good morning.

25 MS. SCOTT: Good morning.

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1 CHAIRPERSON GRIFFIS: A very good morning
2 to you.

3 MS. ROBINSON: My name is Naomi Robinson.
4 I'm ANC Commissioner 7E Chairperson.

5 MS. SCOTT: And mine is Marline Scott,
6 ANC-705, that's my Single Member District.

7 CHAIRPERSON GRIFFIS: Perfect. Okay.
8 This is your time to conduct cross examination. So
9 what you have is just questions of the applicant's
10 representative here of any of their information.

11 MS. ROBINSON: Yes. August the 18th Mr.
12 Kamara came to our meeting, ANC community meeting and
13 made a presentation concerning his building that he
14 wants. The writing that I have it is a four unit
15 apartment building. We, as commissioners, are opposed
16 to any more apartment buildings being in that area.
17 The apartment building that he mentioned that's beside
18 where he want to build is closed, boarded up now and
19 it is bad. It's a drug infested place on North
20 Avenue.

21 So we, this Commission 7E, voted not to
22 have any more apartment buildings in that area. Okay.

23 Mr. Kamara talked to someone and he gave me a letter
24 from -- you sent a clarification. He said that it
25 wasn't apartments, it's a condo. I don't have

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1 anything in writing from you to say it's a condo. I
2 don't know the difference between what he said as
3 apartment and a condo, but an apartment is an
4 apartment, and a condo is different, you know, because
5 you are buying your own.

6 CHAIRPERSON GRIFFIS: Right. Good.

7 MS. ROBINSON: So that is our complaint.
8 We don't want any apartments in there.

9 CHAIRPERSON GRIFFIS: Okay. So it's
10 apartments that you don't want?

11 MS. ROBINSON: That's correct.

12 CHAIRPERSON GRIFFIS: So there is one
13 question I glean from that, which we will get to in a
14 minute. But let me ask, you have indicated that the
15 adjacent building is a boarded up problem apartment
16 building.

17 MS. ROBINSON: Yes, a large apartment
18 building.

19 CHAIRPERSON GRIFFIS: Sure, sure. And is
20 that the basis of not wanting any other apartment
21 buildings?

22 MS. ROBINSON: No, no, that's not it.
23 It's the whole area, that Marshall Heights area.

24 CHAIRPERSON GRIFFIS: Yes.

25 MS. ROBINSON: Which the apartment

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1 buildings and they have been condemned, closed down,
2 boarded up and we're rebuilding that whole area with
3 other developers. HOPE 6 is coming, is in the area
4 and everything, so we are building up that area. And
5 to put apartment buildings in there now where people
6 do not take care of their apartment buildings, because
7 it's not their's, it's deterrent to me.

8 CHAIRPERSON GRIFFIS: I see.

9 MS. ROBINSON: To put it there besides
10 someone is buying something.

11 CHAIRPERSON GRIFFIS: Okay.

12 MS. ROBINSON: The houses are one private
13 home, that's on the left side of where he is building
14 and I have talked to Ms. Julia Reeves.

15 CHAIRPERSON GRIFFIS: Right.

16 MS. ROBINSON: She called me yesterday and
17 told me she couldn't make it down to the hearing. She
18 also said that she had talked to Mr. Kamara and she
19 said she had no problem if it's a condo.

20 CHAIRPERSON GRIFFIS: I see. And does the
21 ANC have any problem if it's a condo?

22 MS. ROBINSON: No, no.

23 CHAIRPERSON GRIFFIS: Okay. So --

24 MS. ROBINSON: Although --

25 CHAIRPERSON GRIFFIS: -- your concern, as

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1 I am understanding the testimony from the ANC, is that
2 you have found in the past that apartment buildings
3 are not well-taken care of and the residents
4 themselves don't take care of their own units.

5 MS. ROBINSON: That's correct.

6 CHAIRPERSON GRIFFIS: And so your concern
7 is having more of that type of product, more
8 apartments that would then lead to more deteriorated
9 buildings and lack of care?

10 MS. ROBINSON: Yes.

11 MS. SCOTT: Yes.

12 CHAIRPERSON GRIFFIS: Okay. So it sounds
13 like it's a quick question here. Is this a
14 condominium or an apartment building?

15 MR. AGBIM: It's a condominium.

16 CHAIRPERSON GRIFFIS: And can you certify
17 that?

18 MR. AGBIM: Four unit condominium.

19 CHAIRPERSON GRIFFIS: I mean, is there any
20 way that you can put into the record that that is what
21 is happening to alleviate the ANC's concerns?

22 MR. AGBIM: Yes. Actually, the statement
23 on the application did mention apartment, primarily
24 because that was the only use that we thought was
25 appropriate as far as zoning was concerned, but --

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1 CHAIRPERSON GRIFFIS: Good. Let me
2 clarify that point very quickly.

3 MR. AGBIM: All right.

4 CHAIRPERSON GRIFFIS: Obviously, when they
5 put an application in to come here, there's nothing in
6 the Zoning Regulations that differentiates between
7 condominium and apartment building. So what he is
8 saying is that he put an application in and labeled it
9 apartment building, because that's all that our
10 regulations address. However, there is more. The
11 actual project he is indicating is a condominium.
12 It's a for sale product, not a rental. Does that make
13 sense?

14 MS. ROBINSON: Yes.

15 CHAIRPERSON GRIFFIS: Okay.

16 MS. ROBINSON: Yes.

17 CHAIRPERSON GRIFFIS: What else?

18 MR. AGBIM: That's pretty much it.

19 CHAIRPERSON GRIFFIS: Okay. Anything else
20 you would like to provide?

21 MS. ROBINSON: I want to make a credit for
22 the record now this is going to be condominium, a four
23 unit condo, right?

24 CHAIRPERSON GRIFFIS: That's exactly what
25 he said.

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1 MR. AGBIM: Condominium, right.

2 MS. ROBINSON: Well, it's best that we
3 have no problem, because even Mrs. Reeves called me
4 and said if it's a condo, that people would have to
5 buy their own, they feel they take care of them
6 better. She had no problem with it. And Ms. Reeves
7 is the lady who live in the only house that's there
8 right next to the place.

9 CHAIRPERSON GRIFFIS: That's right. If
10 you're facing the building, it's on the left side.

11 MR. AGBIM: Right.

12 MS. ROBINSON: Yes.

13 CHAIRPERSON GRIFFIS: Down the hill a
14 little bit.

15 MS. ROBINSON: Yes, yes.

16 CHAIRPERSON GRIFFIS: Yes, okay.

17 MS. ROBINSON: Okay.

18 CHAIRPERSON GRIFFIS: Who lives in the
19 blue house behind?

20 MS. ROBINSON: There is no other house on
21 that side.

22 CHAIRPERSON GRIFFIS: No, behind it. I'm
23 talking about the rear of the property.

24 MR. AGBIM: On Bass Place. There's a blue
25 house on Bass Place, right.

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1 MS. ROBINSON: I don't remember who is on
2 Bass Place.

3 CHAIRPERSON GRIFFIS: Okay.

4 MS. ROBINSON: We didn't go to Bass Place.

5 CHAIRPERSON GRIFFIS: Okay. Okay. It's a
6 very vibrant blue house. I see it in the pictures up
7 here.

8 MS. ROBINSON: I don't know. Do you know
9 who lives there?

10 CHAIRPERSON GRIFFIS: Okay. Excellent.
11 Good. I think I understand very clearly the ANC's
12 concern and I think they have made an excellent point
13 on this. I'll allow the applicant to conduct any
14 cross examination of the ANC members if they have any
15 questions?

16 MR. AGBIM: No.

17 CHAIRPERSON GRIFFIS: Board Members? Ms.
18 Miller?

19 VICE CHAIR MILLER: I just want to ask the
20 applicant just to be clear, how can the ANC be assured
21 that your building is going to be condominium instead
22 of apartments.

23 MR. AGBIM: I think DCRA has an office
24 that's responsible for condominium conversion and you
25 don't have to have a C of O for the project to be

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1 condominiums, rated as condominiums. And if need be,
2 there may be something in the approval that says no C
3 of O should be issued for a four unit rental apartment
4 building or a rental license issued. Because those
5 two things will preclude the use of the building as
6 apartments, as rental apartments.

7 VICE CHAIR MILLER: Okay. So you're
8 saying that will happen at the permitting process?

9 MR. AGBIM: Right.

10 VICE CHAIR MILLER: No? You're not saying
11 that?

12 MR. AGBIM: Permitting? I'm saying a
13 rental license permitting.

14 VICE CHAIR MILLER: Okay.

15 MR. AGBIM: For condominium conversion
16 process. Basically, the difference is that an
17 apartment has a rental license to operate an apartment
18 building. And if you're not issued a rental license,
19 the building cannot never be or shouldn't be rented
20 out as apartments, individual apartments. So once
21 that is precluded, then the owner of the property will
22 have no other choice and they will be assured that a
23 rental license will never be issued for this property.

24 But the property can be converted into condominiums.

25 VICE CHAIR MILLER: And it's also your

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1 word in this proceeding that it is going to be a
2 condominium?

3 MR. AGBIM: Yes, the term for the project
4 is to have four for sale condominiums.

5 VICE CHAIR MILLER: Okay. Thank you.

6 CHAIRPERSON GRIFFIS: Okay. Anything
7 else?

8 MS. ROBINSON: Yes, I want to say one
9 little thing about this. I'm not thinking about this.
10 He can do it either way. So what I'm saying, I want
11 the word condominium being in there, no apartments.
12 See, that's what I want to see.

13 CHAIRPERSON GRIFFIS: Right.

14 MS. ROBINSON: Because this is what the
15 community wants.

16 CHAIRPERSON GRIFFIS: Right.

17 MS. ROBINSON: But what he is saying, if I
18 understand he is saying, it could be either way.

19 MR. AGBIM: No, no.

20 CHAIRPERSON GRIFFIS: No. What he is
21 saying is that, it may have been a little bit
22 confusing, there is going to be a first step where it
23 is pretty much on the track of a condominium and he is
24 going to put in to start his condominium
25 documentation.

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1 MR. AGBIM: Right.

2 CHAIRPERSON GRIFFIS: His condo docs,
3 which the District will take up, review, it will go
4 through several iterations, there's going to be a site
5 plan, etcetera, and then there is a very legal
6 document that will set up the condominium association.
7 It's an awful lot of work. Has that been started?

8 MR. AGBIM: No.

9 CHAIRPERSON GRIFFIS: Okay. I think we're
10 going to have to just take into an assessment of how
11 we feel secure enough to proceed with that as what is
12 being set forth. But I think we fully understand the
13 ANC's position of wanting a home ownership opportunity
14 here.

15 MR. AGBIM: Right.

16 CHAIRPERSON GRIFFIS: Not rental.

17 MS. ROBINSON: Right.

18 CHAIRPERSON GRIFFIS: Okay. Okay. Good.
19 If there's nothing further on that end then, let's
20 move on to the Office of Planning's report, which was,
21 of course, timely filed. It's Exhibit No. 26. And a
22 very good morning.

23 MR. JESICK: Good morning, Mr. Chairman
24 and Members of the Board. My name is Matt Jesick.
25 I'm with the Office of Planning. I would mostly like

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1 to stand on the record this morning, but I would just
2 like to reemphasize the update to the grading plan.

3 CHAIRPERSON GRIFFIS: Good.

4 MR. JESICK: I believe the number 4 feet
5 for the height of the retaining wall was used this
6 morning, but in my reading of the latest plans that
7 Office of Planning has received, I hope it's the same
8 set of plans that the Board has, in my reading of
9 those plans, it looks like the maximum height of the
10 wall would be 2 to 3 feet above the adjacent grade.
11 This is one of the issues that section 353 requires
12 the Office of Planning to look at is the grading of
13 the site. And that was one of our concerns as we
14 reviewed it.

15 And we had hoped while retaining walls can
16 be found throughout this neighborhood, because it is a
17 hilly neighborhood, we had hoped that the development
18 of the property would respect the natural grade as
19 much as possible. So that was definitely something we
20 worked hard on with the applicant. And the latest
21 plans that I have show that the top of the wall would
22 be 161.5 feet above the adjacent grade of 159 feet or
23 slightly less than 159 on the neighbor's property.

24 In addition to that, I would also note
25 that I believe the applicant has been working with the

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1 Department of Housing and Community Development to
2 secure financing for this project, so that might be
3 another way, another safeguard to guarantee that it's
4 a condominium project and that the units can be made
5 affordable.

6 CHAIRPERSON GRIFFIS: Excellent point.
7 You're getting DHCD planning?

8 MR. AGBIM: Yes, yes.

9 CHAIRPERSON GRIFFIS: Through what
10 program?

11 MR. AGBIM: I'm sorry, I don't have the
12 documentation here.

13 CHAIRPERSON GRIFFIS: Okay.

14 MR. AGBIM: But they are -- one of the
15 requirements that they have given me is approval by
16 the Board and once they have approval, they will start
17 to process the paperwork.

18 CHAIRPERSON GRIFFIS: Sure. But is the
19 financing program of what you're --

20 MR. AGBIM: It's a financing program
21 specially geared towards this area for provision of
22 home ownership opportunities.

23 CHAIRPERSON GRIFFIS: Okay. Then I think
24 that would, obviously, be as close to a certification
25 of an ownership opportunity.

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1 MR. AGBIM: Right.

2 CHAIRPERSON GRIFFIS: That we could have.

3 So we'll address that at the end. Not a problem.
4 Good. And Mr. Etherly is also noting that, and it's
5 timely to say, we do have the recommendation of
6 approval from DHCD Director, Mr. Green, also in the
7 record, which is part of the 353, 410 requirements of
8 referral to housing. Very well. Follow-up questions
9 from the Board of the Office of Planning? Mr.
10 Etherly?

11 BOARD MEMBER ETHERLY: Thank you very
12 much, Mr. Chair. No questions for Mr. Jesick. Thank
13 you very much for the report. I'll just note as the
14 Chair indicated in Exhibit No. 22 from the Department
15 of Housing and Community Development that that exhibit
16 does describe the applicant's proposal as being for
17 the construction of four new for sale residential
18 units. So just as further perhaps security and
19 comfort for the ANC regarding the for sale aspect of
20 this project as opposed to rental. Thank you, Mr.
21 Chair.

22 CHAIRPERSON GRIFFIS: Excellent point.
23 Thank you. Ms. Miller?

24 VICE CHAIR MILLER: Mr. Jesick, I'm just
25 curious when the Office of Planning assesses a

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1 building of this sort under 353 and 410, is there
2 anywhere on the Comprehensive Plan or the new Draft
3 Comprehensive Plan where the Office of Planning would
4 consider whether the building was condominium home
5 ownership versus apartment use?

6 MR. JESICK: Well, the first point, I
7 guess, is at this time we weren't referred to the new
8 Comprehensive Plan until it's officially adopted and
9 once it is, obviously, we would give that the most
10 weight. At this time, there is no provision in the
11 Zoning Regulations in section 353 that requires us to
12 look at the nature of the end product, how that will
13 be either sold or rented or what the financing of that
14 would be.

15 VICE CHAIR MILLER: Okay. Thank you.
16 Okay. I just was curious, because I mean, I
17 understand we see our regulations and what they say
18 and then there is also the Comprehensive Plan, which
19 is a pretty big document and sometimes that has some
20 broad themes in there and I was just curious whether,
21 I know it's not in your report and the ANC has brought
22 up this point, and so I was just curious whether in
23 that context one might look at that.

24 MR. JESICK: Like --

25 VICE CHAIR MILLER: Character of the

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1 neighborhood or something like that. I don't know.

2 MR. JESICK: Well, I know certainly the
3 Comprehensive Plan, of course, encourages home
4 ownership and specifically the Ward 7 Plan encourages
5 home ownership and affordable home ownership. I guess
6 for this case, we just looked at the very basics of
7 the Comprehensive Plan being the land use designation
8 and this as being moderate density residential that
9 conforms with that designation.

10 VICE CHAIR MILLER: Right. Okay. Thank
11 you.

12 CHAIRPERSON GRIFFIS: Excellent. Anything
13 else? Any other questions? Yes?

14 COMMISSIONER TURNBULL: Yes, Mr. Chairman.
15 Mr. Jesick, did you talk to the applicant about
16 lighting or anything when you looked at the plan?

17 MR. JESICK: No, that issue did not come
18 up.

19 COMMISSIONER TURNBULL: Okay. Do you --

20 MR. JESICK: We would certainly be
21 supportive of establishing a lighting standard for the
22 rear parking lot. Obviously, light spill over is
23 something we don't want to see on adjacent properties.

24 COMMISSIONER TURNBULL: Okay.

25 MR. JESICK: So we would be supportive of

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1 that.

2 COMMISSIONER TURNBULL: Thank you.

3 CHAIRPERSON GRIFFIS: Excellent. Anything
4 else?

5 VICE CHAIR MILLER: I have one other
6 question. Did you get any response from DDOT with
7 respect to this application?

8 MR. JESICK: The Office of Planning has
9 not received a report from DDOT. This is an area that
10 is in need of some streetscape improvements and I know
11 that the applicant has said he is willing to work with
12 DDOT to -- on the sidewalk and curb issues that exist
13 out there now.

14 VICE CHAIR MILLER: Thank you.

15 CHAIRPERSON GRIFFIS: Anything else? Does
16 the ANC have any questions of the Office of Planning?

17 MS. ROBINSON: No.

18 CHAIRPERSON GRIFFIS: No. Okay. Do you
19 have the Office of Planning's report?

20 MS. ROBINSON: No, we do not.

21 CHAIRPERSON GRIFFIS: Well, we're going to
22 get you a copy before you leave today.

23 MS. ROBINSON: Thank you.

24 CHAIRPERSON GRIFFIS: Very well. If
25 there's nothing else, I don't have any other attendant

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1 Government reports on this application outside of
2 those that we have already mentioned. We have heard
3 from the ANC. We appreciate that. Let me ask then if
4 there are other persons present for Application 17515,
5 persons that would like to provide testimony in
6 support or in opposition can come forward at this
7 time.

8 Very well. Not noting any other persons
9 present, we'll turn it over to you for any closing
10 remarks that you might have. Actually, before
11 closings, let's get all this together. This is what I
12 would like to do. I would like to set this off for a
13 decision making. I would like to keep the record open
14 for a few submissions. Just the identification of the
15 type of financing or the program of which DHCD you are
16 coming under. That will, I think, substantiate
17 better, as Mr. Etherly has highlighted, that is
18 already in the record, that will be some
19 clarification.

20 Now, let's talk about the lighting and the
21 landscaping on this. Are you running power in your
22 retaining wall at all?

23 MR. AGBIM: No.

24 CHAIRPERSON GRIFFIS: Great. Okay. And
25 one of the concerns Mr. Turnbull is delicately

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1 touching upon is this spill over of light and what we
2 have found, I think, in common practice is if you have
3 flood lights on the back of that building to flood the
4 back parking lot, that it may well shine out into the
5 rear, if not the side properties. That wouldn't be
6 appropriate.

7 What are your potential availabilities for
8 lighting at the rear of the surface parking area?
9 One, I would like to have you submit just cut sheets
10 on proposed types of lighting or the specifics that
11 would be the wall-mounted lights, certainly on the
12 sides, the drive side, the side yard side and then the
13 rear. And then I would like you to address how you
14 would, in addition if you -- well, here are the
15 options.

16 At the rear if you're going to have
17 building mounted fixtures, let us know how those would
18 not impact.

19 MR. AGBIM: Right.

20 CHAIRPERSON GRIFFIS: And/or do you have
21 opportunity to put actual, maybe even pole mounted
22 fixtures?

23 MR. AGBIM: Pole mounted, right.

24 CHAIRPERSON GRIFFIS: On the back. Here
25 is my thought just looking at this very quickly. If

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1 you are trenching to do a retaining wall and surface,
2 it may not be out of the range of the budget to
3 actually run a line there for a pole light.

4 MR. AGBIM: Conduits, right, right.

5 CHAIRPERSON GRIFFIS: You know that better
6 than I. But I think that would be appropriate to see.

7 What else? Oh, if you get far enough along, I would
8 keep the record open for a submission of the trash
9 enclosure, just any sort of plan or detail section or
10 elevation, whatever you're going to do or even just
11 more specific notes.

12 MR. AGBIM: Right.

13 CHAIRPERSON GRIFFIS: However you're going
14 to document it. I think that would be good to have in
15 the record. What else am I missing? Anything else in
16 addition? Okay. Let me see if I understand this. So
17 to take trash out, two last questions, an owner would
18 walk out of the front of the building and conceivably
19 walk down the sidewalk and then back up to the trash
20 receptacle or they would walk down their steps, stay
21 on the property line and walk over to the enclosure?

22 MR. AGBIM: Yes, they would have to walk
23 out of the step and --

24 CHAIRPERSON GRIFFIS: Do the steps drop
25 right onto the sidewalk?

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1 MR. AGBIM: Yes.

2 CHAIRPERSON GRIFFIS: Okay. So that's
3 what they would do.

4 MR. AGBIM: Right.

5 CHAIRPERSON GRIFFIS: They would come out
6 on the sidewalk and then back up and around.

7 MR. AGBIM: Right.

8 CHAIRPERSON GRIFFIS: Okay. That sounds
9 interesting. All right. I don't have any other
10 zoning concerns with that. Let me ask you a quick
11 question. Building code allows a single stair on a
12 four story building?

13 MR. AGBIM: Yes.

14 CHAIRPERSON GRIFFIS: Okay. Anything
15 else? Good. Wow. How much time do you need to get
16 that information into the record?

17 MR. AGBIM: Two days.

18 CHAIRPERSON GRIFFIS: Two days?

19 MR. AGBIM: Actually, I have that
20 information already. I just need to compile it.

21 CHAIRPERSON GRIFFIS: The lighting cut
22 sheets, the DHCD?

23 MR. AGBIM: Right, right.

24 CHAIRPERSON GRIFFIS: The --

25 MR. AGBIM: Well, not the DHCD. I have to

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1 probably talk to somebody to write a letter or
2 something.

3 CHAIRPERSON GRIFFIS: Okay.

4 MR. AGBIM: All right.

5 CHAIRPERSON GRIFFIS: Two days realistic?

6 MR. AGBIM: Right.

7 CHAIRPERSON GRIFFIS: Excellent. Then
8 let's have this in no later than noon on Friday.

9 MR. AGBIM: Okay.

10 CHAIRPERSON GRIFFIS: If we do that, we'll
11 be able to put this on our decision making, our Public
12 Meeting next Tuesday, the 3rd.

13 MR. AGBIM: Okay.

14 CHAIRPERSON GRIFFIS: In which case, what
15 I would like to request is that you submit into the
16 record, how do I say it, not a lot of paperwork.

17 MR. AGBIM: All right.

18 CHAIRPERSON GRIFFIS: Meaning there should
19 only be a couple of papers there, that's what we're
20 asking for.

21 MR. AGBIM: Right.

22 CHAIRPERSON GRIFFIS: Because it's going
23 to have to be faxed out to us.

24 MR. AGBIM: Right.

25 CHAIRPERSON GRIFFIS: To make it by the

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1 3rd.

2 MR. AGBIM: Right, right.

3 CHAIRPERSON GRIFFIS: So you'll put it in
4 here by Thursday, no later than 12:00 on Friday and
5 also provide a copy over to the ANC of that
6 submission.

7 MR. AGBIM: Right.

8 CHAIRPERSON GRIFFIS: Okay. And last
9 direction, of course, if you can or not if you can,
10 would you, please, provide also with the cut sheets on
11 the light fixtures where they are being located? Some
12 sort of identification.

13 MR. AGBIM: Right.

14 CHAIRPERSON GRIFFIS: Just so we know.
15 Even if you just write it on the cut sheet, this is
16 side yard, driveway, front, rear.

17 MR. AGBIM: Right.

18 CHAIRPERSON GRIFFIS: Obviously, that will
19 help us, because when we call this for decision on the
20 3rd, there will not be a time for you to address the
21 Board again.

22 MR. AGBIM: Right.

23 CHAIRPERSON GRIFFIS: This will just be
24 our decision making. We will have a complete record
25 and you will hear publicly the Board deliberate on all

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1 the facts and requirements as laid out in the
2 regulations and then we will make a decision based on
3 that. So this would be our last opportunity to ask
4 questions of you for clarification.

5 MR. AGBIM: Right.

6 CHAIRPERSON GRIFFIS: However, as I have
7 indicated, we have kept the record open for several
8 submissions. Very well. Anything else? Anything
9 else you want to highlight?

10 MR. AGBIM: No, no, this is it.

11 CHAIRPERSON GRIFFIS: Excellent.

12 MR. AGBIM: All right.

13 CHAIRPERSON GRIFFIS: Do you have any
14 questions?

15 MS. ROBINSON: No. Everything is fine.

16 CHAIRPERSON GRIFFIS: Okay. Good. As you
17 heard, we're going to have a couple more submissions
18 in just to substantiate what we've all talked about
19 here today. On the 3rd we will call this for decision.
20 You can watch us on the website. You don't need to
21 be down here.

22 MS. ROBINSON: Yes.

23 CHAIRPERSON GRIFFIS: You are welcome to
24 come down, of course. It will be a Public Meeting.
25 There wouldn't be any other opportunity to provide the

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1 Board with information or ask questions or the Board
2 to ask questions of you. Anything else then, Board
3 Members? Very well. We'll set this then for decision
4 on the 3rd and we will see all this in by no later than
5 Friday at 12:00 and I'll get it out to the Board at
6 that time.

7 Very well. Thank you very much.

8 MR. AGBIM: All right.

9 CHAIRPERSON GRIFFIS: We do appreciate it.

10 MR. AGBIM: Thank you.

11 CHAIRPERSON GRIFFIS: Okay. Ms. Bailey,
12 is there any other business for the Board this
13 morning?

14 MS. BAILEY: No, Mr. Chairman.

15 CHAIRPERSON GRIFFIS: Fascinating. If
16 there's no other business then, let's move on and
17 adjourn the morning session.

18 (Whereupon, the Public Hearing was
19 recessed at 10:44 a.m. to reconvene at 1:08 p.m.)
20
21
22
23

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A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

1:08 p.m.

CHAIRPERSON GRIFFIS: Good afternoon, ladies and gentlemen. Let me call to order the afternoon hearing of the Board of Zoning Adjustment of the District of Columbia. It is the 26th of September 2006. My name is Geoff Griffis, Chairperson. Joining me today is the Vice Chair, Ms. Miller, and our esteemed colleague, Mr. Etherly, will be joining us in any second. The pitter patter of his feet are upon us. Representing the National Capital Planning Commission is Mr. Mann and representing the Zoning Commission with us this afternoon is Mr. Turnbull.

Copies of today's hearing agenda are available for you. You should note we have one hearing scheduled for this afternoon, so it won't be that difficult to get through that chronology.

Several very important aspects of the opening statement I'll get through very quickly, however. First of all, it should be known that all proceedings before the Board of Zoning are held in the open and before the public. Attendant to that, they are also recorded. They are recorded in two fashions, the Court Reporter on the floor to my right. Please, fill out two witness cards prior to coming forward, so

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1 that the recorder has your name and connection to the
2 case at hand. We are also being broadcast live on the
3 Office of Zoning's website.

4 The order of procedure for the appeal
5 application of which is scheduled for this afternoon
6 will be as follows: We will hear the statement and
7 witnesses of the appellant, we will hear the Zoning
8 Administrator and other Government officials present
9 their case. We will then go to the case for the
10 owner/lessee, if there is such designated. Then we
11 will hear from the ANC. Then we will hear any
12 intervenors that have been allowed and permitted by
13 the Board. And then finally, we will have
14 rebuttal/closings by the appellant.

15 I'll get through all the details and other
16 aspects, so that we don't take up the time in
17 openings, as they are required for each specific
18 element in the cases that we call, meaning we may set
19 time on each side for appellants and intervenors,
20 etcetera, and I'll give cross examination direction if
21 it is required.

22 However, it should be known that the
23 record will be closed at the conclusion of the hearing
24 on this case. We will make note of any additional
25 information that is required for the record in which

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1 the record would stay open for, I will obviously
2 detail all that at the end of the hearing. So no one
3 will leave without fully understanding all the
4 specifics and requirements that they are facing.

5 The Sunshine Act does require that the
6 Board hold its hearings in the open and before the
7 public. We do enter into Executive Sessions at times,
8 often for reviewing records on cases. This is in
9 accordance with our rules, regulations and procedures.

10 It's also in accordance with the Sunshine Act.

11 I would ask that you turn off your cell
12 phones and beepers, at this time, so we don't have a
13 disruption of the transmission of these proceedings.
14 And I would also indicate that, of course, all the
15 record that is based on the Public Hearing is what we
16 will deliberate on and so we do ask that people not
17 engage Board Members in conversation outside of the
18 Public Hearing today as we would perhaps give the
19 appearance of receiving information that isn't within
20 the public record.

21 Let me say a very good afternoon to Ms.
22 Bailey with the Office of Zoning, Mr. Moy with the
23 Office of Zoning, also on my left. I think, at this
24 point, why don't we take attendance? No, we don't
25 need to do that after all. I will ask though that

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1 people that are going to address the Board this
2 afternoon if you would, please, stand and give you
3 attention to Ms. Bailey, she is going to swear you in.

4 MS. BAILEY: Thank you.

5 CHAIRPERSON GRIFFIS: Excellent. At this
6 point then, we can move on to preliminary matters.
7 Preliminary matters are those which relate to whether
8 a case will or should proceed today. Classically,
9 postings or recordations or other elements going
10 towards preliminary matters, of course, all of them
11 reach the fact of whether a case will or should
12 proceed today. I would ask you to come forward and
13 have a seat at the table if you have a preliminary
14 matter for the Board's attention, at this time. And a
15 very good afternoon, Mr. Gottlieb.

16 MR. GOTTLIEB: Good afternoon.

17 CHAIRPERSON GRIFFIS: I presume.

18 MR. GOTTLIEB: Good afternoon, Mr.
19 Chairman, Members of the Board. I'm here before you
20 today on a case which was filed some months ago. When
21 we came before you in July, the city had moved for a
22 continuance because the city's attorney could not make
23 the session and a continuance was granted to today.
24 As you may recall, the case was plagued by a
25 disappearance of all documentation relating to the

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1 construction site. I filed --

2 CHAIRPERSON GRIFFIS: I'm sorry. Let me
3 just get you on point, a preliminary matter. You have
4 a preliminary matter?

5 MR. GOTTLIEB: Yes. I'm sorry.

6 CHAIRPERSON GRIFFIS: Good.

7 MR. GOTTLIEB: I just wanted to give the
8 record -- I'll cut to the chase.

9 CHAIRPERSON GRIFFIS: We're very up to
10 speed on this.

11 MR. GOTTLIEB: I'm sorry about that.

12 CHAIRPERSON GRIFFIS: That's all right.

13 MR. GOTTLIEB: I'm here before you to ask
14 for a continuance. The other side in this case, the
15 city, I know they filed a motion to dismiss. I have
16 spoken with Mr. Crews and with the city's attorney and
17 they have consented to a continuance at this time.
18 The ANC --

19 CHAIRPERSON GRIFFIS: What's the basis of
20 it?

21 MR. GOTTLIEB: The basis of it is that the
22 -- at this point, all the documentation has not been
23 provided and the city has offered and I have accepted
24 to try to work with them to go through the points that
25 I have raised and to try to work a settlement out

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1 outside of the Board. And I think both sides feel
2 that they can proceed in good faith and hopefully
3 avoid a legal proceeding.

4 CHAIRPERSON GRIFFIS: Okay.

5 MS. BROWN: Mr. Griffis, when it's
6 appropriate, I would like to address that.

7 CHAIRPERSON GRIFFIS: Sure, sure, sure.

8 MS. BROWN: Is now the appropriate time?

9 CHAIRPERSON GRIFFIS: No.

10 MS. BROWN: Okay.

11 CHAIRPERSON GRIFFIS: I'm a little taken
12 aback on the aspect. Maybe I'll hear more about it,
13 but I'm not sure a settlement or a negotiation outside
14 has anything to do with us. We either have an
15 assertion of an error in this case or not. And if
16 there is, then it's properly before us to decide
17 whether that error is of standing or not. So I'm not
18 really sure what you are asking to postpone for to go
19 in and work and see if you can work something out.

20 Let me just say that and I'll -- let me
21 hear from everybody and then we can get to the rest of
22 perhaps my concern, but maybe others. Yes?

23 MS. BROWN: Good afternoon, Mr. Chairman.

24 My name is Carolyn Brown with the Law Firm of Holland
25 and Knight here on behalf of the property owner,

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1 Decker Development. I think there is one important
2 ingredient missing from this request for a continuance
3 and that is that the appellant never contacted the
4 property owner. We have been on record being part of
5 this proceeding, so we do not consent to the
6 continuance. In fact, we strenuously oppose it.

7 We believe this simply amounts to a
8 continuation of what I believe is a frivolous appeal.

9 We see no reason to indulge in a fishing expedition
10 for some zoning violation that just doesn't exist. I
11 believe it's a waste of time, money and energy.

12 CHAIRPERSON GRIFFIS: Understood.

13 MS. BROWN: And I will just leave it at
14 that.

15 CHAIRPERSON GRIFFIS: Okay.

16 MS. BROWN: I have got plenty more reasons
17 to share with you, but I will leave it at that.

18 CHAIRPERSON GRIFFIS: Right, right. And,
19 Mr. Gottlieb, in your opening I don't think you
20 mentioned, I didn't hear it, the actual motion also to
21 dispense from the property owner.

22 Mr. Crews, do you have a comment on this?
23 We're just talking about, at this point, the
24 preliminary matter of postponement.

25 ZONING ADMIN. CREWS: Right. Mr.

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1 Chairman, I think what we're trying to do is be able
2 to further explain our calculations on why we think
3 that the permit was properly issued and the appellant
4 has asked for more time for us to visit together.

5 He has also brought up some other concerns
6 that are probably not before us, before the Board of
7 Zoning Adjustment, but I think we can satisfy his
8 concerns on how we came up with the calculations and
9 address the other issues in an appropriate forum and,
10 therefore, maybe save everybody's time with the
11 likelihood of withdrawal of the appeal.

12 CHAIRPERSON GRIFFIS: What is the
13 appropriate forum that you speak of?

14 ZONING ADMIN. CREWS: Well, he had a
15 couple of other issues along with the Advisory
16 Neighborhood Commission that are not -- I don't
17 believe are zoning issues, but that are concerns of
18 the neighbors and of the construction and the impact
19 on the neighborhood.

20 CHAIRPERSON GRIFFIS: Okay.

21 ZONING ADMIN. CREWS: And we have
22 contacted the other agencies --

23 CHAIRPERSON GRIFFIS: I see.

24 ZONING ADMIN. CREWS: -- involved in that,
25 you know, to kind of again help explain whether those

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1 are correct or not, and then we would go more to the
2 Building Code.

3 CHAIRPERSON GRIFFIS: Gotcha.

4 ZONING ADMIN. CREWS: And the
5 environmental statutes.

6 CHAIRPERSON GRIFFIS: Good.

7 ZONING ADMIN. CREWS: Rather than zoning.

8 CHAIRPERSON GRIFFIS: Understood. All
9 right. Ms. Gates?

10 MS. GATES: I just need a point of
11 clarification, Mr. Chairman. It was my understanding
12 that Mr. Gottlieb filed the appeal citing failure of
13 DCRA. I did not realize --

14 CHAIRPERSON GRIFFIS: What are the areas
15 asserted?

16 MS. GATES: Well, I don't have a copy of
17 the thing immediately in front of me.

18 CHAIRPERSON GRIFFIS: Okay. I'm sorry.
19 We'll get you a copy.

20 MS. GATES: Those were the two. Those
21 were the two parties. Ms. Brown is now seeking to
22 dismiss. I don't think that is her role here. I want
23 to question that.

24 CHAIRPERSON GRIFFIS: Good. Ms. Brown, do
25 you want to speak to your intervenor status?

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1 MS. BROWN: Yes. As you know, under the
2 rules there are several parties that are granted
3 automatic party status under the appeals. Right along
4 with the ANC is the property owner to the proceeding,
5 and that is the basis for our intervention and our
6 motion to dismiss.

7 CHAIRPERSON GRIFFIS: Right. Understood.
8 Actually, let's just pull it out.

9 MS. GATES: Okay.

10 MS. BROWN: I have the cite here in front
11 of me, too.

12 CHAIRPERSON GRIFFIS: It's --

13 MS. BROWN: It's 3199.1.

14 MS. GATES: The case involves the granting
15 of a building permit.

16 CHAIRPERSON GRIFFIS: An appeal, this is
17 an appeal.

18 MS. GATES: That's right.

19 CHAIRPERSON GRIFFIS: Before the BZA and
20 the appeal is laid out as one of the jurisdictional
21 proceedings before us and in that there are rules and
22 establishments, much like in a variance where we
23 establish parties and the criterion for establishing
24 those parties in an appeal, it's a different aspect
25 and a party is defined -- an intervenor is defined in

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1 an appeal as a definition under administrative
2 procedures as including the building owner. So I
3 don't see any way we would not have them as a
4 participant in the appeal.

5 MS. GATES: I seem to recall a case
6 earlier this year in which the ANC was involved with
7 Morten Bender. We filed the appeal and were told we
8 had no right to do so and the Board accepted that,
9 upheld that.

10 CHAIRPERSON GRIFFIS: I'm sorry, who filed
11 the appeal?

12 MS. GATES: The ANC.

13 CHAIRPERSON GRIFFIS: And the property
14 owner was not allowed to be an intervenor in the
15 appeal?

16 MS. GATES: No, the ANC was not recognized
17 in that appeal.

18 CHAIRPERSON GRIFFIS: That doesn't make
19 any sense to me at all. I would love to look at that.

20 MS. GATES: It didn't to us either at the
21 time, but --

22 CHAIRPERSON GRIFFIS: I can imagine.
23 Okay. Well, how does that directly correlate to why
24 the owner in this case would not be a participant?

25 MS. GATES: Because the owner did not have

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1 -- did not issue the building permit. DCRA did and
2 that is the matter upon which this case has been
3 filed.

4 CHAIRPERSON GRIFFIS: I see. Okay. Okay.
5 Good. I think I understand your position.
6 Questions, Board Members? Ms. Miller?

7 VICE CHAIR MILLER: Well, just on that
8 point because I don't recall the other case, but in
9 this case if you look at the definition of party under
10 3199 it says, you know, both the ANC is a party as of
11 right, as well as the owner.

12 But I do have a question for Mr. Crews
13 that is did you not provide the documents that you
14 said you were going to be providing relevant to this
15 appeal to Mr. Gottlieb?

16 ZONING ADMIN. CREWS: I thought we did.
17 There were some additional questions on how the
18 calculations that we provided were arrived at, and I
19 think that was the issue that we have not had a chance
20 to go over with him. But I think that we provided the
21 documentations to both the ANC and then the applicant
22 through the ANC several weeks ago, and I would defer
23 to them to confirm or --

24 MS. BROWN: Mrs. Miller, if I could answer
25 your question a little more specifically. The

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1 property owner provided to Mr. Gottlieb a full size
2 set of stamped, approved drawings on Friday, July 21st.

3 That was the --

4 VICE CHAIR MILLER: Right.

5 MS. BROWN: Tuesday the 18th was the day
6 that you all had the hearing. Then on August 3rd the
7 DCRA forwarded copies of the entire file, all the
8 papers in the permit file plus drawings as well.

9 VICE CHAIR MILLER: Right.

10 MS. BROWN: So that was on August 3rd.

11 VICE CHAIR MILLER: Right. And I -- and
12 you stated that in your motion to dismiss and I wanted
13 to just make sure that Mr. Crews agrees with that.

14 ZONING ADMIN. CREWS: Yes, I think so, and
15 I just -- you know, I mean, the issue that I
16 understand that is still pending is the calculation of
17 the floor area ratio, which applies in this case,
18 because we're in the Wesley Heights Overlay District
19 which has a floor area ratio limit. And I believe
20 that that is -- and we did provide those calculations,
21 but what we probably haven't been able to clarify yet
22 is how -- probably how those calculations were --

23 CHAIRPERSON GRIFFIS: Right.

24 ZONING ADMIN. CREWS: -- come about,
25 especially with the basement and the fenestration.

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1 CHAIRPERSON GRIFFIS: I don't find that we
2 have ever granted nor do I find that as a basis for a
3 postponement based on the fact that we need to have
4 clarification of the participants in an appeal
5 understanding each other's sides or calculations. So,
6 again, I don't --

7 MR. GOTTLIEB: If I could just respond.

8 VICE CHAIR MILLER: When were the
9 calculations provided? Do we know?

10 CHAIRPERSON GRIFFIS: There were no
11 calculations provided. Documents were provided.

12 VICE CHAIR MILLER: Oh, okay.

13 MR. GOTTLIEB: I filed on June 29th a FOIA
14 request and I can show you it.

15 CHAIRPERSON GRIFFIS: That's all right.
16 What is it?

17 MR. GOTTLIEB: So you can read it for
18 yourselves.

19 CHAIRPERSON GRIFFIS: That has got to go
20 in to Ms. Bailey.

21 MR. GOTTLIEB: Well, I'll read it. You
22 know, if you want I can read it to you. It's very,
23 very extensive. It's a four page letter.

24 CHAIRPERSON GRIFFIS: No, but I understand
25 that.

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1 MR. GOTTLIEB: That's fine.

2 CHAIRPERSON GRIFFIS: I mean, I understand
3 that.

4 MR. GOTTLIEB: I never got a response to
5 this.

6 CHAIRPERSON GRIFFIS: No, I understand
7 that.

8 MR. GOTTLIEB: There were --

9 CHAIRPERSON GRIFFIS: Have a seat, Mr.
10 Gottlieb, please.

11 MR. GOTTLIEB: There were numerous
12 investigations done.

13 CHAIRPERSON GRIFFIS: My question is not
14 whether you got documents or not or whether you were
15 able to do the calculations. What you have said to me
16 today is you want to postpone this hearing, of which
17 we set the entire afternoon up for, in order to sit
18 with Mr. Crews to understand his calculations. That
19 is not a basis for an appeal. You're here because
20 you're asserting he made a mistake.

21 MR. GOTTLIEB: Right.

22 CHAIRPERSON GRIFFIS: So now, you're going
23 to tell us where his mistakes were and he is going to
24 defend his calculations. Going back and striking
25 deals and making sure everyone is happy on all these

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1 issues is great. Go do that. We're not involved.

2 MR. GOTTLIEB: Okay.

3 CHAIRPERSON GRIFFIS: So I'm not sure
4 where our involvement is. If you want to postpone for
5 that, actually you're asking to withdraw of which I'm
6 happy to grant if you think you can work it out with
7 Mr. Crews. I have yet to hear why we're not going
8 forward today.

9 MR. GOTTLIEB: Okay, sir, two points.
10 First of all, I submitted a FOIA request June 29th,
11 okay, a request for documents. Okay? I got -- in the
12 end of August, I got a copy from the city of the
13 plans, okay, and the building permit. Last week I got
14 a report on a wall check. That was last week. I
15 never got a formal response to this and I never got
16 other inspection reports that were done pursuant to
17 requests from myself and other neighbors over the
18 course of the last six months.

19 CHAIRPERSON GRIFFIS: But help me
20 understand how a wall check, inspections, any of that
21 has to do with substantiating your assertion in the
22 appeal.

23 MR. GOTTLIEB: Well, for instance, with a
24 wall check it's my understanding if a neighbor
25 complained that they are building on her land, okay,

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1 and that the wall is too close, doesn't meet the
2 minimum requirements, and DCRA sends somebody out to
3 measure it, the results of that measurement and that
4 inspection are something that would be material to me
5 in proving my case whether or not the requirements of
6 the code are met in terms of the side yard
7 requirements.

8 CHAIRPERSON GRIFFIS: But a wall check is
9 after it's -- your appeal, the basis of your appeal,
10 is the issuance of the permit not what happened in
11 construction. So right now I would throw out the wall
12 check.

13 MR. GOTTLIEB: The wall check though is
14 the city's look to see whether the permit was granted
15 properly.

16 CHAIRPERSON GRIFFIS: No, the wall check
17 is the city's look at whether it complies with the
18 permit that was issued and you're appealing the
19 permit. We wouldn't even get into the construction.
20 We wouldn't even get into the wall check.

21 MR. GOTTLIEB: If you're telling me that
22 the city doesn't care whether --

23 CHAIRPERSON GRIFFIS: No, I'm not saying
24 that at all. I'm saying --

25 MR. GOTTLIEB: -- the permit was issued

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1 legally or not --

2 CHAIRPERSON GRIFFIS: You need to be sure
3 you understand what I'm saying. You brought an appeal
4 of the issuance of a permit. There was nothing built
5 at the time of that issuance of the permit. Our clock
6 and time stops with Mr. Crews signing those documents
7 and they went out the door.

8 MR. GOTTLIEB: Right.

9 CHAIRPERSON GRIFFIS: How and what has
10 been built has no jurisdiction to us at this point in
11 your appeal, what you brought to us.

12 MR. GOTTLIEB: Well, if it is shown that
13 the drawings are fraudulent, certainly that would be
14 something I would think you would care about.

15 CHAIRPERSON GRIFFIS: I don't even know
16 what that means. What do you mean fraudulent? Do you
17 mean --

18 MS. GATES: Chairman Griffis, may I
19 follow-up on something you have just said?

20 CHAIRPERSON GRIFFIS: Yes.

21 MS. GATES: And it was the issuance of the
22 permit. This permit is dated January 17, 2000 --
23 excuse me, I have looked at the wrong date, January
24 17, 2006.

25 CHAIRPERSON GRIFFIS: Okay.

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1 MS. GATES: Now, the ANC's letter dated
2 January 10th -- July 10, 2006 refers back to a permit
3 that I know Mr. Crews saw, I saw, Barbara Ingersoll,
4 the next door neighbor, and Mr. Gottlieb saw that said
5 alteration/repair existing proposed floor plans,
6 mechanical, electrical, plumbing plans, new kitchen.
7 There was no new addition on that permit that was
8 hanging in the window.

9 Somewhere between our letter, when these
10 plans were -- these were finally delivered to us, that
11 permit has been changed and re-posted. The house was
12 well, well constructed by January. It was obvious.
13 It had been doubled in size, but the permit wasn't
14 even issued according to this until January.

15 CHAIRPERSON GRIFFIS: What does that have
16 to do with postponing today?

17 MS. GATES: I don't know what it has to do
18 with postponing.

19 CHAIRPERSON GRIFFIS: Okay.

20 MS. GATES: I'm saying there are
21 irregularities.

22 MR. GOTTLIEB: I think, Mr. Chairman, I
23 guess I don't quite understand your point. I am here
24 before you with three of the four parties to this
25 proceeding. Three of the four have agreed that it's

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1 in the public interest to postpone the proceeding and
2 spare the Government the time and expense of
3 litigating this.

4 CHAIRPERSON GRIFFIS: I have no problem if
5 you withdraw.

6 MR. GOTTLIEB: Not only before you, but
7 any appeals, and I'm hearing you're telling us that
8 no, you don't want -- you would prefer parties to
9 litigate not to settle outside the proceeding.

10 CHAIRPERSON GRIFFIS: No.

11 MR. GOTTLIEB: And you would prefer to
12 spend this afternoon and subsequent afternoons
13 litigating this case and having the city litigate and
14 citizens litigate.

15 CHAIRPERSON GRIFFIS: Not at all. I am
16 perfectly open to taking your withdrawal today.

17 MR. GOTTLIEB: No, I did not withdraw,
18 sir. I asked for a continuance.

19 CHAIRPERSON GRIFFIS: And then you're
20 asking for everything.

21 MR. GOTTLIEB: If you're forcing me to
22 withdraw, I think that's also against public policy.

23 CHAIRPERSON GRIFFIS: I'm not forcing you
24 at all. I'm addressing your motion. You are bringing
25 me a motion for postponement, because you want to go

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1 work it out with Mr. Crews, the Zoning Administrator,
2 and I'm telling you that I have no jurisdiction, if
3 you want to go work with him, to somehow work it all
4 out.

5 But you're scheduled for an appeal today
6 that is ripe to go according to your submissions at
7 this point, and I don't see where it serves this Board
8 in postponing and setting this for a whole other date
9 some, frankly, six to eight months from now and then
10 have to come back when the whole purpose, our
11 jurisdiction, is to hear appeals by your assertion
12 that there was an error.

13 There is nothing that could be cured that
14 would remove you from our proceedings unless there
15 actually is no basis for an appeal.

16 MR. GOTTLIEB: Sir, let me just read from
17 the transcript from Tuesday, July 18th of 2006.

18 "Mr. Gottlieb: Do you have an alternate"
19 -- you say that the date of the -- you will move this
20 to the 26th of December. "Mr. Gottlieb: Do you have
21 an alternate date? Chairman Griffis: January '07.
22 Mr. Gottlieb: You know, I guess my -- it depends on
23 when I see all the documents." Further on, "Mr.
24 Chairman, I also submitted a FOIA request. Chairman
25 Griffis: Right. Mr. Gottlieb: On the 29th of June

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1 so, you know, if the city responds to it, which they
2 haven't so far, great. If they don't respond to it
3 then, you know. Chairman Griffis: Yes. Mr.
4 Gottlieb: I am not going to have the documents that I
5 need. Chairman Griffis: Yes, yes."

6 CHAIRPERSON GRIFFIS: I got that. I was
7 here.

8 MR. GOTTLIEB: "So I guess, you know, can
9 we tentatively say the 26th? Mr. Gottlieb: If there
10 is a problem, I guess we can visit that on the 26th."

11 CHAIRPERSON GRIFFIS: What is your point?

12 MR. GOTTLIEB: "Chairman Griffis:
13 Indeed."

14 CHAIRPERSON GRIFFIS: Mr. Gottlieb,
15 please.

16 MR. GOTTLIEB: "Chairman Griffis: Worst
17 case, we would be looking at not proceeding on the
18 26th, but I certainly hope that we would not be in that
19 frame."

20 CHAIRPERSON GRIFFIS: Listen. I will
21 absolutely respect everything and listen to what you
22 say, but let's get to the point. What are you trying
23 to accomplish today?

24 MR. GOTTLIEB: The point is I --

25 CHAIRPERSON GRIFFIS: You have the

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1 documentation.

2 MR. GOTTLIEB: -- requested FOIA on the
3 29th of June.

4 CHAIRPERSON GRIFFIS: So you have had
5 enough time.

6 MR. GOTTLIEB: It is now almost October
7 and I have not had a response from the City of the
8 District of Columbia.

9 CHAIRPERSON GRIFFIS: What are you waiting
10 for? Do you have the plans?

11 MR. GOTTLIEB: I have the plans, yes.

12 CHAIRPERSON GRIFFIS: So you have the
13 permit plans that were issued.

14 MR. GOTTLIEB: Right.

15 CHAIRPERSON GRIFFIS: What else are you
16 waiting for?

17 MR. GOTTLIEB: I'm waiting for all other
18 documents.

19 CHAIRPERSON GRIFFIS: Why would that --
20 why would we hold up an appeal for all other
21 documents? Let me ask you another question. What is
22 the error in the permit documents that you have found?

23 MR. GOTTLIEB: The 30 percent lot
24 occupancy under the Wesley Heights Overlay, the 40
25 percent gross floor area under the Wesley Heights

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1 Overlay.

2 CHAIRPERSON GRIFFIS: What is the lot
3 occupancy?

4 MR. GOTTLIEB: I don't know.

5 CHAIRPERSON GRIFFIS: How can you bring an
6 appeal and say that there is an error?

7 MR. GOTTLIEB: I don't know. I have asked
8 -- I have asked the city to provide me with their
9 documentation that it meets with the code.

10 CHAIRPERSON GRIFFIS: Okay. This is my --
11 I guess this is the root of my concern. Mr. Gottlieb,
12 what you're asking for is to step in the shoes of
13 DCRA. What I understand you saying is that, you know
14 what, you as a citizen have decided that you should
15 review the permit documents for this project and that
16 actually all of the process should halt until you're
17 satisfied that you have done your complete review.

18 MR. GOTTLIEB: Sir, there is no process
19 that has been halted and I think if you walk the site
20 as I have and as Ms. Gates has and as Mr. Crews has,
21 you can do an eyeball of the site and see that things
22 look like they are not in compliance.

23 CHAIRPERSON GRIFFIS: So tell me what is
24 not in compliance.

25 MR. GOTTLIEB: This is not a frivolous --

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1 I'm telling you. The floor area --

2 CHAIRPERSON GRIFFIS: What is the --

3 MR. GOTTLIEB: -- the 8 foot side yard --

4 CHAIRPERSON GRIFFIS: What is the
5 measurement of the side yard?

6 MR. GOTTLIEB: The lack of a storm water
7 management system.

8 CHAIRPERSON GRIFFIS: Listen. This is
9 very specific. Tell me what is the measurement of the
10 side yard. What is your assertion?

11 MR. GOTTLIEB: 4 feet, 4 feet 8 inches, 4
12 feet 9 inches for the garage.

13 CHAIRPERSON GRIFFIS: For the garage?

14 MR. GOTTLIEB: Um-hum.

15 CHAIRPERSON GRIFFIS: Oh, dear. Okay.
16 What is the side yard at the main structure?

17 MR. GOTTLIEB: I believe it's 8 feet, but
18 I'm not certain.

19 CHAIRPERSON GRIFFIS: Okay.

20 MR. GOTTLIEB: The line does not appear to
21 be --

22 CHAIRPERSON GRIFFIS: And the accessory?
23 Let me just ask you.

24 MR. GOTTLIEB: As it's drawn on the plan,
25 it does not appear to --

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1 CHAIRPERSON GRIFFIS: Please, this goes a
2 lot faster. I will listen to your questions.

3 MR. GOTTLIEB: Okay.

4 CHAIRPERSON GRIFFIS: And I will answer
5 them. Does the accessory structure have to comply
6 with the side yard requirements?

7 MR. GOTTLIEB: To my understanding, it
8 does, yes.

9 CHAIRPERSON GRIFFIS: What else? What are
10 the other errors?

11 MR. GOTTLIEB: The side yard, the property
12 line, both the property owner on the other side and
13 myself and Ms. Gates looked at the property and it
14 appears that the property line as drawn in the
15 diagrams is not accurate.

16 CHAIRPERSON GRIFFIS: What is the zoning
17 violation on that?

18 MR. GOTTLIEB: That the side yard setback
19 on the main building is not adequate.

20 CHAIRPERSON GRIFFIS: Side yard. So what
21 does the side yard measure with a proper property
22 line?

23 MR. GOTTLIEB: I have not retained a
24 surveyor to do a re-survey of the property.

25 CHAIRPERSON GRIFFIS: Okay. What else?

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1 MR. GOTTLIEB: The property does not have
2 a storm water management system. It is transferring
3 untreated water to another jurisdiction, the Federal
4 Government, which is its neighbor, the park which it
5 adjoins.

6 CHAIRPERSON GRIFFIS: Okay. Big concern.
7 What is the --

8 MR. GOTTLIEB: The Environmental Intake
9 Form is --

10 CHAIRPERSON GRIFFIS: Wait, wait, wait.
11 What is the section on the regulations in DCMR 11 that
12 the storm water management comes under?

13 MR. GOTTLIEB: I don't have -- I don't
14 have that in front of me.

15 CHAIRPERSON GRIFFIS: Okay. We'll get
16 that.

17 MS. GATES: It's in --

18 CHAIRPERSON GRIFFIS: EISF.

19 MR. GOTTLIEB: The EIS statement is
20 incorrect, as is other documentation that is
21 incorrect.

22 CHAIRPERSON GRIFFIS: Okay.

23 MR. GOTTLIEB: And no -- let's see.

24 CHAIRPERSON GRIFFIS: And how does that
25 relate to a zoning violation?

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1 MR. GOTTLIEB: Well, as I understand it,
2 if these -- if the environmental forms are not
3 provided accurately, they don't proceed with the
4 zoning approval. It's a prerequisite to that.

5 CHAIRPERSON GRIFFIS: What else?

6 MR. GOTTLIEB: The lead hazard control
7 permit is also inaccurate.

8 CHAIRPERSON GRIFFIS: Lead hazard control?

9 MR. GOTTLIEB: Yes.

10 CHAIRPERSON GRIFFIS: Okay. And the
11 zoning attendant to that?

12 MR. GOTTLIEB: It's a requirement for
13 zoning to fill out this form for the Department of
14 Health. They don't proceed without it. You know, I
15 wasn't prepared to argue my case today, so you have me
16 at a disadvantage. I had three of the four parties
17 who agreed to a continuance.

18 CHAIRPERSON GRIFFIS: Wouldn't they have
19 mentioned that?

20 MR. GOTTLIEB: And I really thought I was
21 saving the Board their time by trying to settle this
22 thing outside of chambers.

23 CHAIRPERSON GRIFFIS: Still, I have no
24 problem with you settling it. Okay. What are the
25 other assertions? Is that it?

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1 MR. GOTTLIEB: That's it, yes, at this
2 time, but when I get the remainder of the response to
3 my FOIA request I might amend my complaint. But these
4 were set forth, I believe, in the original filing that
5 I made with you back on March 17th.

6 CHAIRPERSON GRIFFIS: In section 6,
7 section 6?

8 MR. GOTTLIEB: Right.

9 CHAIRPERSON GRIFFIS: Right.

10 MR. GOTTLIEB: They were set forth there.

11 CHAIRPERSON GRIFFIS: Let me address that.

12 MR. GOTTLIEB: So this is not --

13 CHAIRPERSON GRIFFIS: Let me address that.

14 MR. GOTTLIEB: This is not meant to be a
15 fishing expedition, but it is important to note --

16 CHAIRPERSON GRIFFIS: Let me address that
17 then.

18 MR. GOTTLIEB: -- that the city has a
19 responsibility.

20 CHAIRPERSON GRIFFIS: When one asserts in
21 an appeal --

22 MR. GOTTLIEB: These are documents that
23 are supposed to be in the public record and they were
24 not. There is a FOIA requirement that the city is
25 supposed to respond to.

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1 CHAIRPERSON GRIFFIS: I understand that.

2 MR. GOTTLIEB: And it hasn't.

3 CHAIRPERSON GRIFFIS: And we did the best
4 we could under our power and jurisdiction to deliver
5 those. That is not what is under appeal here, and let
6 me address your section 6. Citing the Zoning
7 Regulations is not what I'm used to seeing as a basis
8 of establishing an appeal.

9 MR. GOTTLIEB: Sir, I had no plans at the
10 time. I have absolutely no documentation, zip,
11 nothing.

12 CHAIRPERSON GRIFFIS: And we gave --

13 MR. GOTTLIEB: That is an unreasonable
14 demand to make on a citizen of the city, that they
15 document. What am I supposed to do? I had no plans.

16 CHAIRPERSON GRIFFIS: I don't disagree
17 with you.

18 MR. GOTTLIEB: There was absolutely no
19 documentation from the city.

20 CHAIRPERSON GRIFFIS: I don't disagree
21 with you.

22 MR. GOTTLIEB: That is an unfair burden,
23 sir.

24 CHAIRPERSON GRIFFIS: That's fine. It's
25 terribly unfair and we gave you the time and we have

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1 given you the documents, and then we get here today
2 and you say, you know what, I'm not ready to go
3 forward. I want to postpone again and I want to go
4 work it out to my satisfaction.

5 Again, I ask you what is our jurisdiction?

6 What is an appeal before us?

7 MR. GOTTLIEB: I have asked for a
8 continuance. I don't think I have to prove my case so
9 that you can grant a continuance. I have asked for a
10 continuance. The city has asked for a continuance.
11 The ANC has asked for a continuance. We're all trying
12 to work this out in a positive way so that you don't
13 have to go through a proceeding and I don't and the
14 developer does not. If you want to insist on a
15 proceeding and any appeals that may result from
16 that --

17 CHAIRPERSON GRIFFIS: No, I don't.

18 MR. GOTTLIEB: -- it seems just like not
19 in the public interest. I don't understand what --

20 CHAIRPERSON GRIFFIS: I understand.

21 MR. GOTTLIEB: -- why we're arguing about
22 something that three of the four parties have agreed
23 to.

24 CHAIRPERSON GRIFFIS: Because, one, we
25 don't -- we don't --

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1 MR. GOTTLIEB: And the fourth party hasn't
2 indicated any damage whatsoever. They have been
3 building like gang busters.

4 CHAIRPERSON GRIFFIS: But that's not the
5 basis of a postponement.

6 MR. GOTTLIEB: And I should add also, Mr.
7 Chairman, that the ANC had asked last time for a stop
8 order to be issued and that was never issued because
9 there were no plans. Okay?

10 CHAIRPERSON GRIFFIS: Who issues stop --
11 were you asking me to issue a Stop Work Order?

12 MR. GOTTLIEB: They asked Mr. Crews to
13 issue a Stop Work Order.

14 CHAIRPERSON GRIFFIS: Well, it's not my
15 issue.

16 MR. GOTTLIEB: It was never issued, which
17 is fine, but they have suffered no damage whatsoever.

18 CHAIRPERSON GRIFFIS: That's not the
19 basis. That's not the basis to continue or postpone a
20 hearing or an appeal, that there is no damage
21 asserted. Yes?

22 MS. PARKER-WOOLRIDGE: Chairman Griffis,
23 first of all to the Board, I apologize for being late
24 and also to Mr. Gottlieb and Ms. Gates. I also
25 apologize to Ms. Gates, the ANC commissioner for 3D,

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1 as well as Mr. Gottlieb and Ms. Brown.

2 First of all, the Board did grant a
3 continuance for me last time.

4 VICE CHAIR MILLER: Excuse me, I don't --
5 have you identified yourself?

6 CHAIRPERSON GRIFFIS: Please, state your
7 name.

8 MS. PARKER-WOOLRIDGE: I'm sorry. My name
9 is Doris Parker-Woolridge. I'm with DCRA, Office of
10 General Counsel.

11 The Board granted me a continuance last --
12 I believe in July 2006, because I had an emergency,
13 and I did not oppose Mr. Gottlieb's request for a
14 continuance for the fact that he did not oppose mine
15 or he consented to the continuance. And Mr. Gottlieb
16 is correct. The Agency wasn't able to provide those
17 documents to him for six whole months. Although we
18 looked diligently trying to find those documents, we
19 weren't able to. And without those documents he would
20 not have been able to prepare for an appeal, in all
21 fairness to Mr. Gottlieb and Ms. Gates.

22 So, of course, the Government does not
23 oppose his motion for a continuance. And I understand
24 that Mr. Gottlieb had six weeks from the time that
25 DCRA provided those documents to him --

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1 CHAIRPERSON GRIFFIS: Right.

2 MS. PARKER-WOOLRIDGE: -- on August the 7th
3 and to the ANC, I believe, on August the 3rd. And I
4 understand the Board is probably looking at that Mr.
5 Gottlieb could have reviewed those documents before
6 this hearing. However, the Government just learned
7 from the Zoning Administrator, unfortunately, that he
8 has been subpoenaed. He was issued a subpoena
9 yesterday to appear in Superior Court at 2:00.

10 CHAIRPERSON GRIFFIS: Today?

11 MS. PARKER-WOOLRIDGE: Today. So the
12 Government also has asked for a continuance. This was
13 not foreseen. He just received the subpoena and the
14 hearing started at 9:00, but it's still continuing on
15 and they told him to be back by 2:00.

16 And, also, the Government would like to
17 state from reviewing those documents after I received
18 them and meeting with the surveyor as well as Mr.
19 Crews, the Zoning Administrator, Mr. Gottlieb may be
20 correct. There may not be an issue before this Board
21 and, hopefully, that the parties can resolve this
22 matter.

23 We have done it in the past as well and
24 where the parties come in to withdraw their appeal
25 once they have had an opportunity to meet with the

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1 appropriate people that can give Mr. Gottlieb the
2 answers that he is looking for. After I reviewed the
3 documents and met with the surveyor, again, we saw no
4 violations to the side yard, the rear yard, lot
5 occupancy, etcetera. It was in compliance.

6 However, Mr. Gottlieb had not had the
7 opportunity to meet with the surveyor, as well as meet
8 with the Zoning Administrator, Bill Crews.

9 CHAIRPERSON GRIFFIS: Okay.

10 MS. PARKER-WOOLRIDGE: So my point is that
11 the Government does not oppose this, as well as we
12 have to ask for a continuance ourselves.

13 CHAIRPERSON GRIFFIS: What is your
14 standard operating procedure if someone had a concern,
15 that you would bring in your surveyor and your
16 documentation and walk the site?

17 MS. PARKER-WOOLRIDGE: The surveyor is
18 willing to, like I said, meet with Mr. Gottlieb and,
19 also, I don't think Mr. Gottlieb understood that --
20 there was a question as to whether or not Mr. Crews
21 sends out his inspectors to look at the plan, look at
22 the structure as well as the -- compare the structure
23 to the plans.

24 CHAIRPERSON GRIFFIS: I understand that.
25 Okay. Questions?

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1 VICE CHAIR MILLER: Yes, I have a couple
2 quick questions before you leave just to get you on
3 record. First of all, did you not file a motion to
4 dismiss as well or a motion for -- did you not concur
5 with the owner's motion to dismiss?

6 MS. PARKER-WOOLRIDGE: We --

7 VICE CHAIR MILLER: So that if there --

8 MS. PARKER-WOOLRIDGE: I'm sorry.

9 VICE CHAIR MILLER: I just want to say so
10 that if we are to go forward today and not say, oh, my
11 God, we have to stop our proceedings because you have
12 to go to court, we have you on record as in support of
13 the position. Isn't that correct?

14 MS. PARKER-WOOLRIDGE: Yes, we're in
15 support of the motion to dismiss and you're asking the
16 same question that Mr. Gottlieb asked me this morning,
17 and I don't know if it's proper or not. However, I
18 would ask the court to defer on making a ruling on
19 that motion to dismiss since if the court is going to
20 grant a continuance, because there may not be a need
21 to even deal with the motion to dismiss if --

22 VICE CHAIR MILLER: Right.

23 MS. PARKER-WOOLRIDGE: Once Mr. Gottlieb
24 has met with the appropriate parties, it may be
25 resolved anyway.

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1 VICE CHAIR MILLER: But my question was if
2 you go and we proceed with the motion to dismiss, I
3 just wanted to get your input now, that your input is
4 what was in that pleading that you filed. And my
5 second question is --

6 MS. PARKER-WOOLRIDGE: The answer is yes.

7 VICE CHAIR MILLER: Okay. Thank you. I'm
8 sorry. I just feel rushed, because I don't want you
9 to be late for court.

10 MS. PARKER-WOOLRIDGE: Sure.

11 VICE CHAIR MILLER: Okay. I just want to
12 make sure I understand. I know that you have provided
13 documents to Mr. Gottlieb. Is it correct that those
14 documents were sufficient, in your view, or were they
15 sufficient, in your view, for him to then articulate
16 his claims of error in the building permit?

17 ZONING ADMIN. CREWS: I will answer that.
18 I think they were, because we gave him the set of the
19 plans and we gave him the architect's calculations on
20 the floor area ratio. And so he would have the
21 ability, I think, to review those either by himself or
22 with somebody that had the expertise to do that with
23 him.

24 CHAIRPERSON GRIFFIS: Can I ask you in a
25 more broad -- is there anything that you relied on in

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1 your review and decisions of issuing the permit that
2 were not provided to Mr. Gottlieb?

3 ZONING ADMIN. CREWS: Not that I'm aware
4 of, no.

5 COMMISSIONER TURNBULL: Mr. Chairman, I
6 wonder if I could ask one question.

7 CHAIRPERSON GRIFFIS: Yes.

8 COMMISSIONER TURNBULL: Mr. Crews, thank
9 you for being here. Even after your explanations that
10 you want to do to Mr. Gottlieb, do you believe that it
11 is going to significantly change your viewpoint of
12 where we are right now?

13 ZONING ADMIN. CREWS: No, not at all
14 because I'm not contemplating changing my viewpoint.
15 I just was contemplating --

16 COMMISSIONER TURNBULL: So it's merely the
17 courtesy of going --

18 ZONING ADMIN. CREWS: Right.

19 COMMISSIONER TURNBULL: -- through the
20 calculations and explaining it.

21 ZONING ADMIN. CREWS: Right.

22 MR. GOTTLIEB: On the other hand, Mr.
23 Crews, you and I spoke earlier and you said if there
24 was an error, you will be the first to admit it and
25 fix it.

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1 ZONING ADMIN. CREWS: Oh, right,
2 absolutely. I mean, you know, I'm --

3 MR. GOTTSLIEB: And, likewise, I said if
4 there has been no errors and it's legal, then I will
5 simply withdraw my case. So we're willing to work
6 this out and save you the trouble of a hearing. It
7 seems to me that that would be in the public interest.

8 MS. BROWN: If I could just make one
9 point. To the extent that you all decide to reach the
10 merits of this case, we're fully prepared to defend it
11 and we have the developer here. Thank you.

12 CHAIRPERSON GRIFFIS: Right. Thank you.
13 At this point, I don't see how utilizing this Board in
14 the manner that is being proposed is in the public
15 interest. Follow-up questions?

16 VICE CHAIR MILLER: I don't have any for
17 Mr. Crews. I mean, I think he is anxious to go so if
18 we -- I don't know. I mean, I have comments to Mr.
19 Gottlieb, you know, about where we are in this
20 proceeding. I don't know if it's appropriate to do
21 that.

22 CHAIRPERSON GRIFFIS: Do you have to leave
23 also?

24 MS. PARKER-WOOLRIDGE: Yes, Chairperson
25 Griffis. I have objections for Mr. -- if we're going

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1 to continue with this hearing, I have objections for
2 Mr. Crews having to leave, because I need -- Mr. Crews
3 is my only witness. He is the expert witness. He is
4 the zoning person.

5 CHAIRPERSON GRIFFIS: But are you leaving
6 or it's just Mr. Crews?

7 MS. PARKER-WOOLRIDGE: I am not leaving,
8 but I need my expert witness with zoning.

9 CHAIRPERSON GRIFFIS: That's okay. You
10 can discuss the motion to dismiss, can't you?

11 MS. PARKER-WOOLRIDGE: I would prefer
12 having my witness here with me.

13 VICE CHAIR MILLER: Well --

14 CHAIRPERSON GRIFFIS: But the motion is a
15 legal motion.

16 MS. PARKER-WOOLRIDGE: I understand that,
17 but Mr. Crews is very -- he is the person who has
18 expertise in this technical area of zoning.

19 CHAIRPERSON GRIFFIS: Okay. Why don't we
20 all go down to the court and watch him?

21 MS. PARKER-WOOLRIDGE: Okay.

22 COMMISSIONER TURNBULL: Mr. Chairman, I'm
23 just wondering. I mean, I guess just a general
24 question. I mean, the plans are what they are and
25 that is what the zoning -- that is how the permit was

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1 based upon what they are. If there is something
2 afterwards that is discovered in construction --

3 CHAIRPERSON GRIFFIS: Right.

4 COMMISSIONER TURNBULL: -- it's not really
5 a zoning issue.

6 CHAIRPERSON GRIFFIS: Right, no --

7 COMMISSIONER TURNBULL: I mean, that is
8 not really our purview.

9 CHAIRPERSON GRIFFIS: That's right.

10 COMMISSIONER TURNBULL: If there is
11 something in construction, what we're looking at is
12 it's a zoning issue. That permit was based upon plans
13 that were issued and if -- the plans are what they
14 are. I mean, if subsequently there is something
15 different on the site, isn't that -- I don't know if
16 that's in our purview or not.

17 CHAIRPERSON GRIFFIS: No, you're
18 absolutely correct. Here's what we have. We have a
19 motion to postpone at this point and then, depending
20 on the outcome of that, our next step would be the
21 motions to dismiss. Pending the outcome to that would
22 be either going forward with the appeal today or
23 whenever.

24 MR. GOTTLIEB: Mr. Chairman, if I could
25 just respond. I alleged defects in the permit that

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1 was issued based on the plans that I eventually saw.
2 So I'm not alleging after the fact violations.

3 CHAIRPERSON GRIFFIS: No. You cited the
4 regulations that might be in error.

5 MR. GOTTLIEB: That's right.

6 CHAIRPERSON GRIFFIS: You didn't allege
7 the error. You didn't even state the error.

8 MR. GOTTLIEB: That is correct. In March
9 of 2006 --

10 CHAIRPERSON GRIFFIS: Right.

11 MR. GOTTLIEB: -- I did not have the
12 plans.

13 CHAIRPERSON GRIFFIS: Right.

14 MR. GOTTLIEB: They were brought to the
15 ANC at the beginning of August.

16 CHAIRPERSON GRIFFIS: I know.

17 MR. GOTTLIEB: I was out of the country
18 until the end of August and they were transferred to
19 me at the end of August from the ANC. Okay? So I
20 have had them for a few weeks, but I would say most of
21 the people that come before you have months to prepare
22 for a case not a few weeks.

23 CHAIRPERSON GRIFFIS: I don't know about
24 that, but so what you're saying is you didn't have
25 enough time to look at the documents you got?

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1 MR. GOTTLIEB: And I didn't get all the
2 documents. I got documents --

3 CHAIRPERSON GRIFFIS: Well, actually, Mr.
4 Crews --

5 MR. GOTTLIEB: -- faxed to me last
6 Thursday.

7 CHAIRPERSON GRIFFIS: But Mr. Crews --

8 MR. GOTTLIEB: From Mr. Crews' office.

9 CHAIRPERSON GRIFFIS: This is going to be
10 important for you to understand. Mr. Crews has now
11 said under oath that he has given you all the
12 documents to his knowledge that he based his approval
13 of the permit on.

14 There is no other -- to my mind and I
15 think the Board's mind in our past proceedings, there
16 is no other jurisdictional documents, so don't hold
17 out faith that you're getting more that is going to
18 help your case. You can only prove an error based on
19 what he based his decision on.

20 MR. GOTTLIEB: Well, if there are other
21 documents in the possession of DCRA that he didn't
22 look at --

23 CHAIRPERSON GRIFFIS: So you don't agree
24 with me?

25 MR. GOTTLIEB: I think the FOIA request

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1 speaks for itself.

2 CHAIRPERSON GRIFFIS: Okay.

3 MR. GOTTLIEB: The city has an obligation
4 to respond to it.

5 CHAIRPERSON GRIFFIS: Do you agree with
6 what I said that you have the documents that would be
7 the basis of the appeal?

8 MR. GOTTLIEB: If there are other
9 documents in the DCRA record that he did not look at
10 then, yes, I think I am entitled to use those to show
11 that he made a mistake, absolutely. I don't think
12 we're locked into finding out what the intent of the
13 Zoning Administrator is.

14 CHAIRPERSON GRIFFIS: Right.

15 MR. GOTTLIEB: What he did and didn't
16 read. If it was in the possession and control of DCRA
17 and he didn't look at it because the files were lost
18 then, you know, that's not my problem. That's his if
19 it was -- and that's what the FOIA request is getting
20 at. I want all the documents that DCRA had.

21 CHAIRPERSON GRIFFIS: What sort of
22 documents do you think you would find?

23 MR. GOTTLIEB: Well, there were a number
24 of complaints that have been raised over the last year
25 and somebody at the city supposedly responded and

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1 investigated them, and there is no record of any of
2 those.

3 CHAIRPERSON GRIFFIS: Perhaps it's just a
4 differing understanding of this whole process that
5 we're in, because you're saying that if someone
6 complained to DCRA, Mr. Crews shouldn't have issued a
7 permit because there were complaints on things?

8 MR. GOTTLIEB: No. I want to see what the
9 professionals' response was.

10 CHAIRPERSON GRIFFIS: But he is the
11 professional.

12 MR. GOTTLIEB: And he has people who work
13 for him. He doesn't do everything in the office.

14 CHAIRPERSON GRIFFIS: No, he does
15 actually. You appeal his decision. He is the Zoning
16 Administrator.

17 MR. GOTTLIEB: He is the Zoning
18 Administrator and he is an administrator. He is an
19 office. He has people who work for him.

20 CHAIRPERSON GRIFFIS: No, no, but legally
21 you're going to be here and I don't care who signed
22 off or actually physically did it. Mr. Crews is --

23 MR. GOTTLIEB: And he is responsible for
24 those in his employ.

25 CHAIRPERSON GRIFFIS: That's right.

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1 MR. GOTTLIEB: And if there are people in
2 his office that filed a report saying this is wrong or
3 that is wrong and he didn't look at it --

4 CHAIRPERSON GRIFFIS: But the appealable
5 element is the permit, the appealable element not --

6 MR. GOTTLIEB: Yes, the permit.

7 CHAIRPERSON GRIFFIS: It doesn't matter
8 what documents.

9 MR. GOTTLIEB: And the documents that were
10 in the possession of DCRA. I am not going to go
11 inside his head and figure out what he was thinking,
12 what he was reading. That's just -- that's not a fair
13 way to proceed, what his intent was when he did it.
14 It's what was in the record when he did it.

15 CHAIRPERSON GRIFFIS: I don't understand
16 any of that.

17 MR. GOTTLIEB: That's the legal basis for
18 his actions. What was in the file when he granted
19 permission.

20 CHAIRPERSON GRIFFIS: No, actually it was
21 what was granted. His decision is under appeal.

22 MR. GOTTLIEB: Okay.

23 CHAIRPERSON GRIFFIS: Not what's in the
24 file.

25 MR. GOTTLIEB: I have a right to see the

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1 file, to see everything that was in there. It's a
2 FOIA request.

3 CHAIRPERSON GRIFFIS: Believe me, my
4 jurisdiction doesn't go to all your rights and I'm not
5 saying you don't have the right and I'm not saying you
6 don't have the right to FOIA. I'm saying it has no
7 relevancy here. You should be ready to go today.

8 MR. GOTTLIEB: It has no -- so a FOIA
9 request to the Government that is not responded to at
10 all, I didn't get one response to this, one letter,
11 okay, you're saying that's --

12 CHAIRPERSON GRIFFIS: You're --

13 MR. GOTTLIEB: -- not relevant to your
14 proceeding?

15 CHAIRPERSON GRIFFIS: You're hanging up on
16 a technicality. You were delivered --

17 MR. GOTTLIEB: It's not a technicality.

18 CHAIRPERSON GRIFFIS: You were delivered
19 all the documents.

20 MR. GOTTLIEB: A FOIA is a technicality?

21 CHAIRPERSON GRIFFIS: You were delivered
22 all the documents that was the basis of his decision.
23 Isn't that what he just said? Do you not agree with
24 that?

25 MR. GOTTLIEB: I don't know what the basis

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1 of the decision was. I know what the FOIA request
2 asked for and I'm happy to share it with Members, but
3 the city had -- this is the law. This is not some
4 little irrelevant minutia. This is the law --

5 CHAIRPERSON GRIFFIS: I didn't say any of
6 that.

7 MR. GOTTLIEB: -- that the city has to
8 provide. You said it's irrelevant to the proceeding.
9 It's not irrelevant. That is a law, okay, that the
10 city has to comply with. It's not optional.

11 CHAIRPERSON GRIFFIS: Speed limit is not
12 relevant to our hearing today.

13 MR. GOTTLIEB: Okay.

14 CHAIRPERSON GRIFFIS: Questions?

15 MR. GOTTLIEB: This is relevant and
16 you're, you know, making fun of it as if it's not.

17 CHAIRPERSON GRIFFIS: No, I don't think
18 you're --

19 MR. GOTTLIEB: Just doesn't -- you don't
20 comport with any --

21 CHAIRPERSON GRIFFIS: I don't think you're
22 hearing anything that is going on here.

23 MR. GOTTLIEB: Okay.

24 CHAIRPERSON GRIFFIS: And I don't
25 understand that.

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1 ZONING ADMIN. CREWS: Mr. Chairman, just
2 to double-check on this issue, if we could talk about
3 what materials you have that we gave you. I mean, the
4 reason I ask that is that I have got about three
5 different documents here of calculations and these are
6 what -- the basis of our decision. And if -- and I
7 just want to make sure that Mr. --

8 MR. GOTTLIEB: And I got them last
9 Thursday. Okay?

10 ZONING ADMIN. CREWS: But that's not what
11 my question was.

12 MR. GOTTLIEB: I got them last Thursday.

13 CHAIRPERSON GRIFFIS: But that's his case
14 presentation.

15 VICE CHAIR MILLER: Yes.

16 CHAIRPERSON GRIFFIS: I'm not sure that
17 you should be delivered that necessarily. If you got
18 them ahead of time, that's great.

19 MR. GOTTLIEB: Well, I guess I'm not
20 entitled to any documents, am I?

21 ZONING ADMIN. CREWS: Well, I mean, to a
22 certain extent --

23 CHAIRPERSON GRIFFIS: I don't know why you
24 keep --

25 ZONING ADMIN. CREWS: Oh, I'm sorry.

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1 CHAIRPERSON GRIFFIS: -- being extreme on
2 what I'm saying, Mr. Gottlieb. I am being very direct
3 and I think very succinct, and actually absolutely
4 consistent with every other appeal we have ever done
5 on this Board. And I have just heard the Zoning
6 Administrator say no less than three times that he
7 delivered all the documents that were the basis for
8 his issuing a permit.

9 The basis of this appeal is an error in
10 the issuance of a permit that has been limitedly and
11 thinly addressed and asserted. However, we have given
12 you the latitude to substantiate that and, yet, you're
13 holding out on that there are these hidden documents
14 that you're waiting for and that you want to get in
15 and figure out all the calculations.

16 That is all great. I applaud all of that.
17 I just don't see how that is a basis for me to
18 continue this appeal. That's it, pretty simple. Ms.
19 Miller?

20 VICE CHAIR MILLER: Mr. Crews, what is the
21 significance of those calculations and does he have
22 them?

23 ZONING ADMIN. CREWS: Apparently. That is
24 what I wanted to check to make sure. Now, obviously,
25 once he had the plans he can make his own

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1 calculations, and these that we gave to him last week
2 were an attempt also to help explain to him how we
3 made our calculations and the Chairman is right that
4 this would be our work product and such.

5 There are no other reports. You know, I
6 personally have been out there a couple of times, but
7 have not prepared any written reports, and I don't
8 know that any of my inspectors have been out there and
9 if they have, they have not produced any written
10 reports, you know, for better or worse I might add
11 because, you know, this issue has come up before.

12 But the -- so, you know, once he had --
13 you know, I just want to make sure that I was, you
14 know, making -- was being correct in ascertaining that
15 we have got him all of the relevant documents and to
16 my knowledge, there are no other documents.

17 VICE CHAIR MILLER: Okay. And then
18 because I know you're going to leave --

19 ZONING ADMIN. CREWS: Yes.

20 VICE CHAIR MILLER: In your opinion, based
21 on what you have been hearing today, is it possible
22 that some of his complaints may go to enforcement
23 issues with respect to whether or not the building was
24 built in compliance with the permit, as opposed to
25 whether the permit was properly issued?

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1 ZONING ADMIN. CREWS: Absolutely.

2 VICE CHAIR MILLER: Okay. And, also, we
3 have your pleading. Is there anything else, if we
4 were to go forward and hear arguments on the motions
5 to dismiss, that you would want to add to yours or are
6 you standing on -- would you stand on your pleading?

7 ZONING ADMIN. CREWS: I would stand on the
8 pleadings.

9 VICE CHAIR MILLER: Okay. Thank you.

10 MR. GOTTLIEB: Right. But if I -- if you
11 make me proceed today, I need him as a witness. Okay?

12 So you're either going to have to violate the
13 subpoena and have him here or you're going to have to
14 give me a continuance.

15 CHAIRPERSON GRIFFIS: Well, the --

16 MR. GOTTLIEB: I waited from January of
17 this year --

18 CHAIRPERSON GRIFFIS: No, let me address
19 that.

20 MR. GOTTLIEB: -- to get the documents in
21 this case.

22 CHAIRPERSON GRIFFIS: Let me address it.

23 MR. GOTTLIEB: And you sat by.

24 CHAIRPERSON GRIFFIS: Mr. Gottlieb.

25 MR. GOTTLIEB: I didn't get the documents

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1 for eight months.

2 CHAIRPERSON GRIFFIS: We're not going to
3 have a productive afternoon if you don't let me speak.

4 MR. GOTTLIEB: I mean, I have had it for a
5 few weeks and you want to push me to withdraw.

6 CHAIRPERSON GRIFFIS: No one questions the
7 time. No one questions. You were posing it as a
8 withdraw. I am not pushing you to do anything and I
9 cannot subpoena Mr. Crews. So if you wanted him and
10 he decided in the middle of a hearing to get up and go
11 back to his office, there is nothing that I could
12 compel him to do to stay. Fault me for that, Mr.
13 Gottlieb, but it's not within my powers to make him
14 come as your witness.

15 Mr. Crews, I think you have to go.

16 ZONING ADMIN. CREWS: I'm sorry.

17 CHAIRPERSON GRIFFIS: I mean, there is an
18 awful lot that is asserted on this Board and actually
19 complained of, of why don't we do certain things and
20 why don't we, you know, force certain things and we
21 have often talked about trying to increase our powers,
22 but we still don't have subpoena powers as the other
23 court has asserted.

24 Board Members, let's hear it. We have got
25 the steps. I have laid them out here. We have a

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1 motion to postpone. Comments?

2 VICE CHAIR MILLER: I think we ought to
3 hear the motion to dismiss. I don't see any reason to
4 postpone a hearing on the motion to dismiss, which is
5 a legal matter which we don't need Mr. Crews here for
6 and which DCRA has filed a pleading and there is no
7 reason why Mr. Gottlieb shouldn't be able to address
8 whether or not the appeal should be dismissed at this
9 time.

10 CHAIRPERSON GRIFFIS: Others?

11 COMMISSIONER TURNBULL: I would concur
12 with Ms. Miller.

13 CHAIRPERSON GRIFFIS: Opposing opinions?

14 MS. GATES: This is the one without the
15 porch.

16 MR. GOTTLIEB: Right.

17 CHAIRPERSON GRIFFIS: I would tend to
18 support that also, and there's two major factors. Let
19 me just try to reiterate it. One, I think we need to
20 go to the substance and the basis of postponement. I
21 don't think -- actually, they are combined and
22 intricately combined.

23 I think this Board takes very seriously
24 about postponing and continuing cases based on the
25 severity and the seriousness of a lot of the

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1 complaints we get on this Board, and maybe we get a
2 lot. Let's just say we get a lot of complaints and
3 some stick and some won't perhaps. But one of the
4 ones that I have great concern with is how long cases
5 take and then how full our schedule is.

6 I mean, we often talk, I know in private,
7 about creating efficiency and effectiveness, clarity
8 to it, and also in public. And so in any postponement
9 or continuance we have to take that into account, but
10 that is just one element. That is process. Then
11 let's get to the specifics and the substance and that
12 is where we measure it and weigh it, and I haven't
13 heard anything today that supports postponing this.

14 The weight of additional time for more
15 documents I think has been refuted that there might be
16 a resolution is one thing and I don't dispute that,
17 but that, to me, is not a request or a substantiation
18 for a postponement. That is actually an idea that
19 there is no need for an appeal, and so it should be
20 taken elsewhere. And so I would also concur with the
21 Board and continue into the motions discussion.

22 VICE CHAIR MILLER: Okay. I would like to
23 just separate the postponement issues a little bit. I
24 see no reason to postpone hearing a motion to dismiss,
25 because it's a legal issue and Mr. Gottlieb should be

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1 addressing that issue now. I think we might want to
2 revisit, if we don't grant the motion to dismiss,
3 whether or not a witness is needed. You know, that's
4 kind of a --

5 CHAIRPERSON GRIFFIS: That's fine.

6 VICE CHAIR MILLER: -- different issue.

7 CHAIRPERSON GRIFFIS: Totally different.

8 VICE CHAIR MILLER: Okay. So at this
9 point then we would be proceeding on the motion to
10 dismiss.

11 CHAIRPERSON GRIFFIS: That's correct.

12 MR. GOTTLIEB: A point of order, Mr.
13 Chairman. As I understand it, I came before you and
14 moved for a continuance, so I would like to hear from
15 each of the Members of the Board in their roles as
16 officials of this City of Washington, D.C. as to what
17 their views are on my motion for a continuance.

18 Secondly, it's my understanding that the
19 city asked that its motion for a dismissal be deferred
20 to another date after the continuance is granted.

21 CHAIRPERSON GRIFFIS: We have heard all
22 that. Mr. Gottlieb, your assertion of having each
23 Board Member speak --

24 VICE CHAIR MILLER: Right.

25 CHAIRPERSON GRIFFIS: -- what have we just

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1 done? Sometimes I don't understand some of the --

2 MR. GOTTLIEB: Just like a formal vote on
3 my motion for a continuance.

4 VICE CHAIR MILLER: Oh, when --

5 MR. GOTTLIEB: And I would like to add
6 also it's my understanding that --

7 CHAIRPERSON GRIFFIS: We'll get there.

8 MR. GOTTLIEB: -- you have granted. When
9 parties ask for more time, you have granted more time
10 without spending an hour cross examining the parties,
11 especially when three of the four agree for a
12 continuance. I got those, the drawings, at the end of
13 August. Okay? I have had a couple of weeks to review
14 it.

15 I am not an architect. I am not a
16 surveyor and I need more than a couple weeks to review
17 it. I think that is just a courtesy that you have
18 extended to many other applicants. I have seen you
19 extend hearings many times and I don't understand why,
20 when the city is agreeing to it, you're not doing so
21 here.

22 CHAIRPERSON GRIFFIS: Yes?

23 VICE CHAIR MILLER: Mr. Chairman, I would
24 move to deny the appellant's motion to postpone the
25 hearing prior to the Board's considering the motion to

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1 dismiss, which has been filed by both DCRA and the
2 owners. And in support of my motion, I would state
3 that I haven't heard a good reason for postponing an
4 argument on this legal issue, and I think -- well, I
5 will leave it at that.

6 I don't think there is prejudice to any of
7 the parties. I think it's time for the appellant to
8 at least identify the error, which would be the
9 subject of this appeal.

10 BOARD MEMBER ETHERLY: Seconded, Mr.
11 Chair.

12 CHAIRPERSON GRIFFIS: Excellent. Thank
13 you, Mr. Etherly. Others? Speaking to the motion?
14 Very well. We have a motion before us. It has been
15 seconded. I would ask for all those in favor to
16 signify by saying aye.

17 ALL: Aye.

18 CHAIRPERSON GRIFFIS: And opposed? Any
19 abstaining? Very well. Why don't we record the vote,
20 Ms. Bailey?

21 MS. BAILEY: Mr. Chairman, the vote is 5-
22 0-0 to deny the appellant's motion for a continuance.
23 Mrs. Miller made the motion, Mr. Etherly second, Mr.
24 Griffis, Mr. Mann and Mr. Turnbull support the motion.

25 CHAIRPERSON GRIFFIS: Thank you. Let's

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1 move ahead then. We have motions before us.

2 VICE CHAIR MILLER: Can I just say a few
3 words?

4 CHAIRPERSON GRIFFIS: Sure.

5 VICE CHAIR MILLER: Mr. Gottlieb, I just
6 want to say a few words for your benefit mainly,
7 because I think people that don't practice that often
8 before the Board aren't necessarily all that aware of
9 our regulations or the parameters of our jurisdiction.
10 And I just want to say that I had a little dialogue
11 with Mr. Crews with respect to what kind of errors you
12 might be concerned about, and what we have before us
13 is an appeal of a building permit.

14 What we don't have is that there was a
15 mistake in the issuance of a building permit that
16 happened at a certain period of time, and what we are
17 looking for you to do is identify the errors that were
18 made in Mr. Crews having issued that permit at that
19 time. If there are issues with respect to how the
20 building was built in compliance with the permit, that
21 is not before us.

22 And I just wanted to explain that, but I
23 guess at this point, Mr. Chairman, then I guess the
24 procedure would be for the makers of the motion to
25 argue first their motion.

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1 CHAIRPERSON GRIFFIS: Yes.

2 VICE CHAIR MILLER: Okay.

3 CHAIRPERSON GRIFFIS: I'm not sure that we
4 need a full argument, but I would rather just have a
5 briefing and then we can hear responses orally on
6 that. I think they are fairly straightforward. It
7 seems to be my understanding of the filing dates that
8 Ms. Brown would be first.

9 MS. BROWN: Thank you, Mr. Chairman,
10 Members of the Board. We do believe that this
11 application should be dismissed for failure to state a
12 claim upon which relief can be granted. That is a
13 term of art that is used within the D.C. Superior
14 Court and the D.C. Court of Appeals.

15 It's a 12(b)(6) motion that says when an
16 applicant or when a petitioner or a complainant has
17 failed to allege any facts to support his claim, and
18 looking at it in a light most favorable to him, you
19 have to get rid of the case if he has nothing to back
20 up the claims. And I have cited in our brief the
21 Klausen case where someone had made some vague
22 allegations about some liquor manufacturer's
23 advertising to minors, yet the person who was bringing
24 the claim could not point to any advertisement.

25 We have the same situation here. Mr.

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1 Gottlieb has made broad, general, vague allegations
2 that the Zoning Regulations have been violated, but he
3 has not provided one bit of evidence to support it
4 other than what we heard briefly today, that he
5 believes that there is an error in the side yard
6 measurement which we dispute.

7 But it is up to Mr. Gottlieb to present
8 those facts and show us why he thinks it's only 4 feet
9 9 inches wide and why an accessory building has those
10 side yard requirements applying to it. That is not
11 our burden. He has the burden. He had the burden to
12 prepare a prehearing statement. He failed to do that.

13 We personally exchanged telephone calls, I did with
14 Mr. Gottlieb, about making sure that he got the full
15 size set of drawings.

16 He claims that he didn't get them until
17 the end of August. Well, he had them July 21st and I
18 called him several times after that to meet with him
19 to arrange a meeting with our architects to explain it
20 to him and he did not avail himself of any of those
21 opportunities. He has missed the boat. He has missed
22 the opportunity to support his claim and without any
23 substantiated claims, there is nothing to rule on and
24 the case should be dismissed. Thank you.

25 CHAIRPERSON GRIFFIS: Thank you. Mr.

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1 Gottlieb?

2 MR. GOTTLIEB: Yes, sir. The Board seems
3 to feel that the laws that apply in the city, the
4 District of Columbia, don't have any relevance to
5 Board proceedings. So I guess, first of all, I would
6 like to say, as a city resident and as an attorney,
7 it's my understanding that the FOIA law does apply to
8 all agencies of the Government, including this one.

9 And your insistence that we spend this
10 afternoon, you say you're pressed for time, we are now
11 going to spend all afternoon arguing a case that I
12 could have resolved with the city amicably and that we
13 could have determined whether or not there were
14 violations. But instead of allowing the city and
15 myself and the ANC to determine whether or not the
16 violations I allege are true or not, you have decided
17 all you Members want to spend your afternoon here and
18 argue.

19 Then you want to give me the opportunity
20 to appeal the case, which I promise you I will. So
21 you, obviously, see your time as unlimited and you
22 also see the public interest as not served by having
23 the city respond to complaints of its citizens and
24 working those complaints and allegations out outside
25 of a litigation setting.

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1 It seems to me that the Board is not
2 serving the public interest here, insisting on a
3 hearing when the parties to the proceeding, three of
4 the four, have agreed to try to mediate the dispute.
5 To determine whether the violations are accurate or
6 not seems to me in everyone's interest. And in this
7 case, the developer is moving ahead as he has from the
8 outset.

9 I might add this case has been fraught
10 with very irregular conduct, very suspicious conduct.

11 The Board is aware that the entire file for this
12 proceeding was missing for, approximately, eight
13 months. I would like to understand how the Board
14 explains that, missing documents for eight months. I
15 am at a disadvantage. I have got to file an action
16 with absolutely no information, no information. That
17 is an unfair burden for you to impose on citizens,
18 okay, and then to make me proceed when I have had
19 those documents for a matter of weeks.

20 I am not an architect. I am not a
21 surveyor. I am not in the real estate business. I
22 need time to get experts and between Labor Day and
23 now, no, I have not gotten those experts assembled and
24 I have not had the opportunity to. My neighbor who
25 lives right next door to this proceeding could not

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1 make the hearing today. She has been very vocal about
2 the development and has had altercations with the
3 developer personally. She was not able to make it
4 today.

5 Mr. Crews is also not able to make it
6 today. I really am at a loss to understand why you
7 insist on spending your afternoon hearing a proceeding
8 that we are all saying to you might be settled
9 outside, so you don't have to have a proceeding.

10 CHAIRPERSON GRIFFIS: Good. Thank you.
11 Of course, we are discussing the motions to dismiss as
12 brought forth by Ms. Brown. But addressing your
13 comments, Mr. Gottlieb, perhaps briefly, it's
14 interesting that -- well, first, let me state
15 unequivocally we're not holding you up from resolving
16 this outside. You could have done that last week.
17 You can do it next week. That has really nothing to
18 do with us if you think that you can resolve it
19 outside.

20 How we would -- you put upon us to explain
21 to you why DCRA lost documents is beyond me why you
22 even ask us, because I'm not sure why you would think
23 we would know or actually have any ability to tell you
24 that unless you're asserting this for some other
25 audience, which isn't aware to me. And your

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1 assertions and continued assertions that we're putting
2 an unfair burden on you, I still don't understand and
3 would like to understand.

4 You have brought this appeal. We have
5 gathered here today for you. It is your burden to put
6 on an appeal. We are not adding your burden. We are
7 not being in any way unfair to you in terms of adding
8 additional requirements for you to bring an appeal.
9 It is the same regulations. It is the same burden
10 that everyone has that you have based exceptionally --

11 MR. GOTTLIEB: But most people have access
12 to the documents for months before they even have to
13 file the notice of appeal, let alone have a hearing.

14 CHAIRPERSON GRIFFIS: You can say it.

15 MR. GOTTLIEB: I have had a matter of
16 weeks.

17 CHAIRPERSON GRIFFIS: You can say it, but
18 it doesn't make it true. And we take every --

19 MR. GOTTLIEB: Look at your calendar and
20 see how long it takes from the day a complaint is
21 filed until the hearing. It's usually six months. I
22 had a matter of weeks to prepare for this.

23 CHAIRPERSON GRIFFIS: Perhaps the whole
24 process isn't understood then. Okay. That's all I
25 have on that. Ms. Gates, motion to dismiss? I got

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1 you.

2 VICE CHAIR MILLER: I know.

3 MS. GATES: Mr. Chairman, I really don't
4 know where to go with this to be honest with you.
5 There are irregularities here, but I do believe the
6 irregularities in this building permit application --

7 CHAIRPERSON GRIFFIS: Okay.

8 MS. GATES: -- belong to DCRA and not to
9 zoning.

10 CHAIRPERSON GRIFFIS: Okay. Let me just--

11 MS. GATES: So --

12 CHAIRPERSON GRIFFIS: Let me address it
13 specifically. You have a motion before you to dismiss
14 and I'm allowing you to address this motion.

15 MS. GATES: No, I understand that. I
16 understand that. I suppose I'm torn because I think
17 when Mr. Gottlieb filed, what he filed was based on
18 fact. There were no plans. The house was almost
19 totally framed out. It was clear there was a problem.
20 There was nothing to base a judgment on. The plans
21 have now been found and so I suppose the motion to
22 dismiss should be supported by the ANC and the matter
23 returned to DCRA.

24 CHAIRPERSON GRIFFIS: Okay. Yes?

25 MS. PARKER-WOOLRIDGE: In support of the

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1 District's motion to dismiss, Decker applied for --

2 CHAIRPERSON GRIFFIS: Do you want to move
3 the microphone closer to you?

4 MS. PARKER-WOOLRIDGE: Yes.

5 CHAIRPERSON GRIFFIS: Thank you.

6 MS. PARKER-WOOLRIDGE: Decker applied for
7 a permit on July 14, 2005. DCRA issued a permit on
8 January 17, 2006. At some point after or after the
9 permit was issued, the ANC and Mr. Gottlieb came to
10 the Agency to review those documents in support of the
11 permit that was issued. The documents were not there.

12 Finally, on August 3, 2006, we found the
13 documents. We notified the ANC and we notified Mr.
14 Gottlieb. Those documents were provided to both the
15 ANC and Mr. Gottlieb.

16 MR. GOTTLIEB: No, you provided them to
17 the ANC.

18 MS. PARKER-WOOLRIDGE: To the ANC and
19 then --

20 MR. GOTTLIEB: And then she provided them
21 to me when they came back from review.

22 MS. PARKER-WOOLRIDGE: Yes, and that was
23 for the fact that Mr. Gottlieb said he would get the
24 documents from ANC, so there would be no expense to
25 him to obtain those documents from DCRA to cover the

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1 record. After the documents were submitted to both
2 parties, DCRA did not hear from Mr. Gottlieb nor the
3 ANC.

4 DCRA contacted the parties to find out if
5 they had any questions or needed any assistance in the
6 documents that were provided to them prior to this
7 hearing, so that we could review the documents and
8 discuss their allegations that they raised in their
9 appeal. Unfortunately, we didn't have an opportunity
10 to meet to review those documents.

11 However, we reviewed the documents. DCRA
12 reviewed the documents with the Zoning Administrator.

13 We also reviewed the documents with the surveyor and
14 DCRA concurs with Decker's attorney that there were no
15 violations of the Zoning Regulations and that Decker
16 Development is in compliance with the Zoning
17 Regulations.

18 I could be redundant and repeat what Ms.
19 Brown has just stated, but we're going to say the
20 exact same thing.

21 CHAIRPERSON GRIFFIS: Very well. Thank
22 you. Questions from the Board? Ms. Miller?

23 VICE CHAIR MILLER: Mr. Gottlieb, can you
24 identify an error in the building permit that was -- a
25 specific error that is in violation of the Zoning

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1 Regulations?

2 MR. GOTTLIEB: Yes, there are several.
3 First of all, the drawings themselves don't seem to
4 comport with the visual look at the property. Ms.
5 Gates and I surveyed.

6 VICE CHAIR MILLER: Wait, wait. Oh, I'm
7 sorry.

8 MR. GOTTLIEB: Looked at the property on
9 Saturday. We found the pin in the road, which is a
10 pin that is placed there when the road is paved that
11 shows where the property line is. The pin was very
12 different from the property line shown on this drawing
13 and very different than the property line that they
14 are constructing on now. So there is some reason to
15 believe that these drawings are not accurate and don't
16 comply with reality. Secondly, the setbacks.

17 VICE CHAIR MILLER: I don't -- it's still
18 not specific enough for me. What do you mean? What
19 regulation is violated by --

20 MR. GOTTLIEB: The setbacks here are not--
21 don't comply with reality. The drawings say one
22 thing. The lot line as shown by the pin in the road
23 shows something else.

24 CHAIRPERSON GRIFFIS: Let's address that
25 just specifically.

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1 VICE CHAIR MILLER: Yes.

2 CHAIRPERSON GRIFFIS: Because if we were
3 in a full substantive hearing on that element, what we
4 would then ask you is how would the Zoning
5 Administrator have known where that pin in the road
6 was in order for him --

7 MR. GOTTLIEB: Because the Zoning
8 Administrator was called repeatedly by neighbors when
9 they were doing construction before the permit was
10 granted, because this applicant, Mr. Decker, got a
11 permit last summer for a kitchen renovation.

12 CHAIRPERSON GRIFFIS: Okay. I understand
13 that.

14 MR. GOTTLIEB: Let me just show you
15 something.

16 CHAIRPERSON GRIFFIS: No, no, no.

17 MR. GOTTLIEB: I want to show you.

18 CHAIRPERSON GRIFFIS: Mr. Gottlieb, have a
19 seat. Let's finish.

20 MR. GOTTLIEB: This is what was done.

21 CHAIRPERSON GRIFFIS: Listen, listen to
22 me, Mr. Gottlieb. Have a seat. We're going to focus
23 on one element and then -- you can't hand those to us.

24 MR. GOTTLIEB: Kitchen renovation.

25 CHAIRPERSON GRIFFIS: You cannot hand

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1 those to us. You can put them into the record with
2 Ms. Bailey. Listen, I ask you to do the same thing
3 every other person in front of us does. If you want
4 to put those in the record, hand them to Ms. Bailey.
5 She will go make copies.

6 MR. GOTTLIEB: They are my only copy.

7 CHAIRPERSON GRIFFIS: Okay.

8 MR. GOTTLIEB: And they are printed on the
9 back with a date which shows --

10 CHAIRPERSON GRIFFIS: Then you can't put
11 them into evidence.

12 MR. GOTTLIEB: -- that the construction
13 was done before.

14 CHAIRPERSON GRIFFIS: And we can't talk
15 about them right now if they are not evidence. Let's
16 get back to the pin. What you're asserting is the
17 issuance of the permit. Is it in the regulations that
18 Mr. Crews would go out to the site? Is he required to
19 go out to the site? And let me ask you then if he
20 didn't go out to the site, is that an error in his
21 analysis in issuing the permit? And if he did go out
22 to the site and he missed it, is that the error? I'm
23 trying to understand what that error would be.

24 MR. GOTTLIEB: Okay. I think it's my
25 understanding. And unfortunately I don't have Barbara

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1 Ingersoll, who is the resident, who met with Mr. Crews
2 I believe in December, because the construction was
3 going on without a permit and he did visit the site.
4 I don't know what their discussion was, but she was
5 concerned that they were doing construction on her
6 land. Did you meet with Mr. Crews in December?

7 CHAIRPERSON GRIFFIS: Okay. Let me ask
8 you. Let me ask you outside of the specifics of this
9 particular case then procedurally, standard operating.

10 Mr. Crews, the Zoning Administrator, is he availed,
11 required to go out and check the stake, the property
12 stakes or --

13 MR. GOTTLIEB: No, but if a property owner
14 makes the complaint to him and he or persons in his
15 employ go out and they are told this property line is
16 not what it is being represented as then, yes, I think
17 they have a duty to investigate.

18 CHAIRPERSON GRIFFIS: And investigate it.
19 Okay.

20 MR. GOTTLIEB: And that is actually why I
21 put a FOIA request in to see what the response was to
22 Barbara Ingersoll's complaints which were made in
23 December of 2005 before the permit was issued, this
24 permit which was issued in January of 2006.

25 CHAIRPERSON GRIFFIS: Okay. Ms. Miller,

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1 more questions?

2 VICE CHAIR MILLER: I don't know. Was
3 that the answer to my question? I guess that was my
4 only question about if this --

5 MR. GOTTLIEB: Well, and as a result the
6 side yard setback is not met.

7 VICE CHAIR MILLER: Which is the side yard
8 setback is not met in what way?

9 MR. GOTTLIEB: It's not 8 feet.

10 VICE CHAIR MILLER: And what is it?

11 MR. GOTTLIEB: It is 4 foot 9 inches and
12 that is the measurement that we have.

13 CHAIRPERSON GRIFFIS: Actually, what is
14 the measurement on the permit plans?

15 MR. GOTTLIEB: 8 feet.

16 CHAIRPERSON GRIFFIS: And the documents
17 you're referring to that measure 4 foot 9 inches is
18 what?

19 MR. GOTTLIEB: That is the measurement I
20 made and that was the measurement that, presumably,
21 somebody who went to the property in December could
22 have made right then when Ms. Ingersoll called.

23 CHAIRPERSON GRIFFIS: Okay.

24 MR. GOTTLIEB: But I don't have the record
25 as to --

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1 CHAIRPERSON GRIFFIS: So I'm --

2 MR. GOTTLIEB: First, I don't have Ms.
3 Ingersoll here.

4 CHAIRPERSON GRIFFIS: I understand that.

5 MR. GOTTLIEB: Because she is out of town.

6 CHAIRPERSON GRIFFIS: I got that, I got
7 that. I'm with you.

8 MR. GOTTLIEB: Secondly, I don't have the
9 report as to what was done in response to her
10 complaint.

11 CHAIRPERSON GRIFFIS: Let me just see if I
12 understand what you're telling me. You're saying that
13 the permit documents that Mr. Crews approved show a
14 correct 8 foot side yard. Is that right?

15 MR. GOTTLIEB: Yes.

16 CHAIRPERSON GRIFFIS: Okay. And that
17 you're asserting that there is a neighbor and yourself
18 and others, that in the field condition that 8 feet is
19 not complied with. Is that correct?

20 MR. GOTTLIEB: But more precisely, Mr.
21 Chairman, before the permit was issued they notified
22 Mr. Crews, the Building Administrator --

23 CHAIRPERSON GRIFFIS: I understand all
24 that, yes.

25 MR. GOTTLIEB: -- that there was a

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1 problem.

2 CHAIRPERSON GRIFFIS: I understand that,
3 but am I correct in understanding that the documents
4 that were approved for permit show 8 feet dimension?

5 MR. GOTTLIEB: That is correct.

6 CHAIRPERSON GRIFFIS: Okay.

7 MR. GOTTLIEB: But he was on notice
8 before --

9 CHAIRPERSON GRIFFIS: I got all that.

10 MR. GOTTLIEB: -- the permit was issued.

11 CHAIRPERSON GRIFFIS: I got all that,
12 because here is the frustration. You're a lawyer.
13 You should understand this. I am not a lawyer, so I
14 just get frustrated, but we're bound by these legal
15 aspects. We're bound by what our regulations tell us
16 we can or cannot look at. And if we're asserting an
17 error of the Zoning Administrator in issuing a permit,
18 that basis of documentation is going to be the
19 drawings of which he issued.

20 If they don't build it or they build it
21 illegally, that is a whole other aspect. That goes
22 into enforcement.

23 MR. GOTTLIEB: I'm not talking about
24 something done after the fact.

25 CHAIRPERSON GRIFFIS: I know.

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1 MR. GOTTLIEB: I'm talking about something
2 that was done before the fact.

3 CHAIRPERSON GRIFFIS: I understand that,
4 but I understand there is a lot of complication in the
5 chronology of all this. But even still, and I would
6 wholeheartedly say that the courts will uphold me on
7 this, that the document, the official document, the
8 official decision of the Zoning Administrator, of
9 which is appealable to us -- do you agree with that,
10 Mr. Gottlieb?

11 MR. GOTTLIEB: I agree that his decision
12 is appealable to you, but I --

13 CHAIRPERSON GRIFFIS: His official
14 decision. What is his official decision in this case?

15 MR. GOTTLIEB: Well, you told me before
16 that you wanted -- that you were limited --

17 CHAIRPERSON GRIFFIS: Just answer my
18 question.

19 MR. GOTTLIEB: -- by what the Zoning
20 Administrator knew at the time, and I am now telling
21 you he knew at the time that there were issues about
22 the integrity --

23 CHAIRPERSON GRIFFIS: I understand.

24 MR. GOTTLIEB: -- of the drawings.

25 CHAIRPERSON GRIFFIS: We can take these

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1 concerns.

2 MR. GOTTLIEB: He was on notice, so now
3 we're going back inside --

4 CHAIRPERSON GRIFFIS: No, no, no.

5 MR. GOTTLIEB: -- his head like you wanted
6 to do earlier.

7 CHAIRPERSON GRIFFIS: No, I didn't.

8 MR. GOTTLIEB: And I'm telling you --

9 CHAIRPERSON GRIFFIS: I didn't.

10 MR. GOTTLIEB: Yes, you said you don't
11 care what's in the record. It's only what he knew.
12 Well, I'm telling you --

13 CHAIRPERSON GRIFFIS: No.

14 MR. GOTTLIEB: -- he was told by Barbara
15 Ingersoll.

16 CHAIRPERSON GRIFFIS: You are wrong. You
17 are patently wrong. Now, listen to me. What is
18 appealed here is an official decision. What documents
19 Mr. Crews' official decision, his field trips or the
20 documents that came out of DCRA?

21 MR. GOTTLIEB: Well, if one of the
22 documents out of DCRA is a report on his field trip by
23 him or other people --

24 CHAIRPERSON GRIFFIS: Not an official
25 decision.

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1 MR. GOTTLIEB: -- who responded to Barbara
2 Ingersoll, that's part of the record.

3 CHAIRPERSON GRIFFIS: His official. Then
4 maybe it's a misunderstanding on your part, I would
5 have to assert, because I'm not hearing correctly what
6 is appealable to us. Letters, little discussions,
7 memos, emails, those are not an official decision.

8 MS. GATES: Mr. Chairman, may I ask a
9 question, please?

10 CHAIRPERSON GRIFFIS: I guess we're
11 finished with this. Let's move to questions.

12 MS. GATES: No, this goes right to your
13 question. There is -- I do not have my Zoning Code in
14 front of me, but I know there is a provision in the
15 code that plans presented and plans built should be
16 the same. And I think that in a sense is at the
17 essence of this case today. The plans presented
18 magically disappeared. Permits were issued.

19 If you look, I assume you all have a copy
20 of this, this is the packet of the building permits
21 that the Zoning Administrator provided to Mr. Gottlieb
22 and to me. No, you don't have it. It is going to
23 take too long really to copy it, but just let me say
24 that as late as January 12th signatures were still
25 being put on this application, so it really hadn't

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1 been approved.

2 There is a porch on the back of the house
3 that doesn't show up on these plans that we got.
4 There are just irregularities.

5 CHAIRPERSON GRIFFIS: I understand that,
6 but what do you want us to do with irregularities?

7 MS. GATES: Well --

8 CHAIRPERSON GRIFFIS: Package it for us so
9 we can put it within our jurisdiction.

10 MS. GATES: I am going to try and package
11 it.

12 CHAIRPERSON GRIFFIS: I'm going to try to
13 adjudicate it. Whatever you want to do, I'll do it.

14 MS. GATES: I believe it's what I said
15 before. It is an issue that the Zoning Administrator
16 needs to review and any noncompliance issues need to
17 be dealt with.

18 CHAIRPERSON GRIFFIS: So --

19 MS. GATES: However, I don't under -- when
20 an applicant comes to you with something like this,
21 where is the resolution? I mean, why are these cases
22 even taken in, if they don't belong here?

23 CHAIRPERSON GRIFFIS: I'm not sure I
24 understand. Why is --

25 MS. GATES: There is a zoning problem

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1 here, because the plans presented and the permit
2 issued are not the same. We saw a permit for a
3 kitchen renovation that was on there for months.
4 There is no application here for a kitchen renovation.

5 But what we did see when the kitchen renovation
6 permit was in the window was a doubling of the size of
7 the house.

8 CHAIRPERSON GRIFFIS: Right.

9 MS. BROWN: Mr. Chairman, I'm trying not
10 to interfere too much with these proceedings, but I do
11 have to object. We're way far afield of the motion to
12 dismiss and we're talking about things that aren't
13 even in the record and that is part of the problem.
14 It was the appellant's burden to put any of these
15 documents into the record that they thought would make
16 their case and they are just not here.

17 MR. GOTTLIEB: Right. Well, because the
18 city didn't respond to my FOIA request. That is why
19 they are not here.

20 MS. BROWN: I guess the other question
21 then, Mr. Gottlieb, for Mr. Gottlieb is what did you
22 do with the drawings that you received July 21st?

23 MR. GOTTLIEB: The drawings from July 21st,
24 with all due respect, I really didn't feel I could
25 rely on given the irregularities in this case. I

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1 wanted to see the drawings that came from DCRA. So I
2 was not going to rely on the drawings that you
3 provided me, sorry to say, because there have been
4 many irregularities in this case, as Ms. Gates has
5 indicated, and I felt I wanted to see the official
6 record.

7 I don't think that's an unreasonable thing
8 to ask for. That is the public's right in any
9 building construction permit to see the official
10 record, and that is supposed to be open to the public.

11 PARTICIPANT: Mr. Gottlieb, I --

12 MS. PARKER-WOOLRIDGE: Chairman?

13 CHAIRPERSON GRIFFIS: Yes?

14 MS. PARKER-WOOLRIDGE: Chairperson
15 Griffis, in reference to the alleged irregularities in
16 the permit and the plan that Ms. Gates is alluding to,
17 the BZA does not have jurisdiction over the issue. It
18 would be the Office of Administrative Hearings where
19 they should appeal any discrepancies with the building
20 permit.

21 VICE CHAIR MILLER: Yes.

22 CHAIRPERSON GRIFFIS: We're aware of that,
23 but thank you for that.

24 MR. GOTTLIEB: No, the issue is if the
25 Zoning Administrator is on notice before he issues a

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1 permit that there are irregularities in the permit
2 itself, that there are drawings that are not reliable.

3 CHAIRPERSON GRIFFIS: Right.

4 MR. GOTTLIEB: And our point is he should
5 not be issuing a permit when he has reason to believe
6 that the permit is fraudulent.

7 CHAIRPERSON GRIFFIS: Right. Believe me,
8 everyone understands your point, Mr. Gottlieb. Okay.
9 Others? Questions, clarifications? Mr. Turnbull?

10 COMMISSIONER TURNBULL: Mr. Chairman, I
11 guess I'm looking at giving just maybe some comments.

12 CHAIRPERSON GRIFFIS: Um-hum.

13 COMMISSIONER TURNBULL: We had Mr. Crews'
14 basic statement earlier under oath that regardless of
15 further time that his opinion as to the issuance of
16 the permit would still stand, that he then said that
17 his issuance of the permit is based upon a set of
18 drawings he believes is accurate which, I'm assuming,
19 included a certified survey and I think in light of
20 that that if there is something that has happened
21 since then or there is irregularities on the site,
22 that that's not a Mr. Crews' issue.

23 I mean, that's -- I mean, he still based
24 his opinion upon valid documents that he felt were
25 valid, I mean, documents that he felt were valid at

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1 the time. And as far as a zoning issue and for us, I
2 think that's what we need to look at.

3 CHAIRPERSON GRIFFIS: Agreed. Others
4 quickly?

5 VICE CHAIR MILLER: Quickly what?

6 CHAIRPERSON GRIFFIS: Or not quickly.

7 VICE CHAIR MILLER: I don't know.

8 CHAIRPERSON GRIFFIS: Comments, questions?

9 VICE CHAIR MILLER: Are we having a
10 deliberation or are we --

11 CHAIRPERSON GRIFFIS: Could well be. I'm
12 open to my Board in which direction you would like to
13 go to. While you think about that, Mr. Gottlieb, in
14 looking at the documents, the actual permit, stamped
15 documents that were issued, reviewed and issued by Mr.
16 Crews, do you find any of the regulations cited in
17 your section 6 as not being complied with?

18 MR. GOTTLIEB: The building permit
19 including the drawings?

20 CHAIRPERSON GRIFFIS: The drawings, yes.

21 MR. GOTTLIEB: Well, I thought -- as I
22 mentioned earlier, the Environmental Intake Form which
23 indicates that the project, according to the contract
24 agreement, is going to cost \$36,000, \$36,300. To me
25 when I see that for an addition to a house in this

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1 area and I see the drawings, that might set off an
2 alarm bell that, gee, maybe this document is not an
3 accurate document.

4 Likewise, when I see that they are gutting
5 a house that was built in the 1950s and they say there
6 is no lead involved, no lead-based paint involved, I
7 would say that's an issue. When you have an
8 Environmental Impact Statement where the house borders
9 on national park land and it does not respond to the
10 question as to whether any streams within 100 feet of
11 the site are affected and there is a stream on federal
12 park land, that is something I would be concerned
13 about.

14 The Zoning Administrator, as far as I can
15 tell, absolutely ignored the fact that this property
16 borders national park land and that there will be a
17 direct environmental impact on that park land. There
18 was absolutely nothing done in respect of that and it
19 was absolutely not even considered by the city. And
20 that was one of the things that we had hoped to
21 discuss with the city outside of this proceeding.

22 CHAIRPERSON GRIFFIS: Okay. Very well.
23 That's very clear. And, again, I will state that
24 there is nothing that precludes you from doing that
25 with these proceedings. Okay. Anything else?

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1 Clarifications from the Board? I'm ready to hear
2 deliberation on this motion. Who would like to
3 proceed?

4 VICE CHAIR MILLER: I guess I'll start.
5 Basically where I'm at is I think there is a failure
6 here to state a claim of error with respect to the
7 appeal that has been made. The appeal is of -- is
8 with respect to the building permit, that the Zoning
9 Administrator made an error in issuing the building
10 permit. And we have provided the appellant time to
11 articulate what that error is even though he hasn't
12 done it up until now.

13 Usually, when someone files an appeal they
14 at least articulate what the error is. And we heard
15 the appellant say in July that he needed to look at
16 plans, which are public record, which he should have
17 had the opportunity to look at, and the permit
18 documents in order to formulate his appeal and we gave
19 him that leeway and then we're here a couple of months
20 later and there is still no articulation of a specific
21 error in the building permit and the issuance of it.

22 I think that the appellant appears to be
23 very disturbed about irregularities that may be
24 apparent with respect to compliance with plans or
25 permits, that it may not have been built as was

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1 presented in plans. And it's my understanding that
2 that is not within our jurisdiction, that we don't
3 have jurisdiction with respect to compliance
4 enforcement.

5 We don't have jurisdiction, I don't
6 believe, with respect to whether there was some fraud
7 on the part of the owner or some other irregularities.

8 Where we have expertise in is zoning and whether or
9 not the building permit may have been improperly
10 issued with respect to our Zoning Regulations, and
11 appellant has yet to be able to articulate that.

12 And I don't believe that it's in the
13 public interest or judicial efficiency to keep
14 stringing along continuance dates until an appellant
15 can figure out even what they want to appeal, so I
16 would be in favor of dismissing this case.

17 CHAIRPERSON GRIFFIS: Is that a motion?

18 VICE CHAIR MILLER: If you want me to pose
19 a motion at this point, then I would move to grant the
20 motion to dismiss of intervenor, Decker Development
21 Company, and the District of Columbia.

22 CHAIRPERSON GRIFFIS: Is there a second?

23 BOARD MEMBER ETHERLY: Second, Mr. Chair.

24 CHAIRPERSON GRIFFIS: Thank you, Mr.
25 Etherly. Again, speak to the motion?

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1 VICE CHAIR MILLER: I just also want to
2 note that as I understood the ANC, that the ANC also
3 supported the motions to dismiss, that the ANC is also
4 concerned about some irregularities with respect to
5 this site, but did not see that the matter was
6 properly before us.

7 CHAIRPERSON GRIFFIS: Excellent. Others?

8 BOARD MEMBER ETHERLY: Mr. Chair, thank
9 you very much.

10 CHAIRPERSON GRIFFIS: Yes.

11 BOARD MEMBER ETHERLY: I would like to
12 thank Mrs. Miller for her motion. I think she has hit
13 all of the salient points as it relates to where we
14 are in this case. Specificity, specificity,
15 specificity.

16 That is the word that I have just traced
17 over in my folder in front of me as we have gone
18 through our deliberation which, quite frankly, has
19 been painful, frustrating and very close to, in my
20 opinion, violating some of the strictures of decorum
21 and good order as it relates to how I like to see
22 practice in front of this Board, how I like to see
23 this Board interact with all members of our community,
24 residents, developers, business owners, you name it.

25 That being said, let me just run through

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1 my thoughts here. Specificity. I think Mrs. Miller
2 has been right on point as she has talked about how
3 patient I think this Board has been in trying to set
4 the stage for or I should say setting the stage to
5 facilitate your search for additional information.

6 As we began this case, there were concerns
7 expressed on the part of the appellant that there
8 wasn't an appropriate level of information in front of
9 the appellant to perhaps achieve the level of
10 specificity that one would desire at the outset of an
11 appeal. I think this Board was very patient in acting
12 deliberately in providing or affording more time.

13 Documents have now been received both from
14 DCRA and from the intervenor. However, today the
15 Board has been confronted with the request for more
16 time to perhaps better understand those documents, as
17 has been stated by the appellant, more time to perhaps
18 resolve this situation. I want to be very clear and
19 put that particular issue in its proper perspective.

20 This Board always, I think, encourages
21 those types of opportunities and I share the
22 Chairman's statement wholeheartedly that any action
23 that this Board takes today does not, in my opinion,
24 suggest that those efforts should stop. Those efforts
25 should, please, please, continue. But while those

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1 efforts are commendable, I do not think that they
2 release the appellant from the requirements as has
3 been laid out in the intervenor's motion for some
4 minimal level of specificity as it relates to stating
5 a charge.

6 It is very true that this Board does not
7 have in its own rules and regulations a 12(b)(6)
8 counterpart, if you will, but for those of us who are
9 familiar with the most rudimentary and elementary
10 teachings of law school, many of which come in that
11 first year of civil procedure, 12(b)(6) is a very
12 familiar threshold which any lawyer has to pass the
13 mustard of.

14 There is no ifs, ands or buts about that.

15 It's a protection that I think is very fundamental
16 and goes to the heart of any legal proceeding or
17 quasi-legal proceeding for that matter.

18 And I think the essential struggle here
19 continues to be, and 12(b)(6) at least in the spirit
20 of it as we're talking about it today speaks to even
21 if we look at all of the information in the most
22 favorable light possible, let me emphasize that, the
23 most favorable light possible, afford the appellant
24 the benefit of the doubt, perhaps make a few bridges
25 to buttress some assumptions, I simply still don't see

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1 the specificity.

2 I think, as Mrs. Miller indicated, at best
3 what we have here is a compliance and an enforcement
4 issue. As the Chairman has indicated before, I would
5 love to do a power grab and have all the power at my
6 disposal to remedy these kinds of instances, because
7 we see them quite a bit, but it is not within our
8 purview and it is not my responsibility or the
9 responsibility of my colleagues to correct that
10 deficiency by trying to exercise that power which we
11 do not have.

12 As I talked about the issue of the
13 discussions around resolving this situation amicably,
14 which I hope will still happen, I also want to speak a
15 little bit to the FOIA piece, because I want it to not
16 be lost on the appellant and any of the parties that
17 are here for this case, that this Board takes every
18 aspect of the District's and the laws of this country,
19 be it FOIA or any other relevant provision, and I
20 don't think that this Board for a minute is demeaning
21 or marginalizing the importance of FOIA and your
22 request, but I think this Board's charge is to look at
23 all of the information that Mr. Crews had at his
24 disposal and with that information in hand ask
25 ourselves the essential question, which is is there a

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1 zoning error that was made by the issuance of that
2 permit?

3 Now, again as the 12(b)(6) inquiries
4 suggest, if I look at this in the most favorable light
5 to the appellant and perhaps consider for a moment
6 that maybe that FOIA request is going to result in
7 some new information that perhaps will lead to a
8 zoning inquiry, I still have to balance that against
9 the specificity requirements needed to state a cause
10 of action here on the grounds of this appeal, and I
11 simply could not make that connection. And I think an
12 admirable job was done by the Chair and other Members
13 of this Board to afford that opportunity even up to
14 today.

15 Again, one of my outstanding concerns, but
16 I want to be very clear that this concern has no
17 grounding in my decision making, but again I think we
18 ran up against some of the absolute limits and
19 boundaries of decorum and good order as this Board
20 afforded the appellant this opportunity to try and
21 build that case of specificity, so much so that I have
22 been sitting here looking at 3108 myself, which is the
23 relevant Zoning Regulation that deals with decorum and
24 good order.

25 Quite frankly, I felt at times like I was

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1 being barked at like a junkyard dog and that's not, as
2 a servant of this city, a good feeling to be in
3 regardless of the frustration, regardless of the anger
4 that you may feel. But I want to be very clear that
5 that has no grounding in this decision.

6 I think the motion is supported by the
7 absence of specificity here. I think that that
8 minimum standard simply cannot be ignored. It is a
9 protection that is there for not only builders, not
10 only developers, but also for residents and property
11 owners, perhaps one day yourself as homeowner.

12 That being said, Mr. Chair, I think the
13 motion is well-supported by the absence of specificity
14 as laid out in the intervenor's motion, and I am -- I
15 won't say pleased or happy to support the motion,
16 because I'm not, but I think it is the appropriate
17 outcome given this Board's responsibilities and given
18 the requirements and the language and letter of the
19 Zoning Regulations. Thank you, Mr. Chair.

20 CHAIRPERSON GRIFFIS: Excellent. Thank
21 you very much, Mr. Etherly. Others? Mr. Mann?

22 BOARD MEMBER MANN: I would just add
23 briefly that I also support the motion and just to
24 counter an assertion I actually believe that we adhere
25 quite strictly to the rules and regulations that

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1 govern this Board, and I believe that in this case we
2 are enforcing those regulations appropriately.

3 CHAIRPERSON GRIFFIS: Thank you. Others?

4 COMMISSIONER TURNBULL: Mr. Chair, I think
5 I would agree with the comments of my colleagues, and
6 I think my basic feeling on this, I will just echo
7 what I said earlier that Mr. Crews' statement that
8 although he is more than willing to explain and go
9 through how they came up with the regulations, how
10 they arrived at issuing the building permit, that he
11 is not going to change, that his statement to issue
12 the building permit would still stand.

13 And then in light of that, I think the
14 efforts to -- his extracurricular work to explain how
15 they arrived at that I think is very commendable and
16 should go on, but my feeling is that we shouldn't
17 endure this any longer.

18 CHAIRPERSON GRIFFIS: Excellent. Thank
19 you very much. I think you have all hit on the fact
20 that the burden of bringing an appeal to this Board is
21 very high and we ask that of everyone as it is
22 outlined in the regulations.

23 It is often not easy when not faced with
24 the day-to-day operations of land use or zoning to
25 assert those, and I think we take an ample amount of

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1 time and steps in order to ensure that a quality and
2 substantiveness of appeals can be brought, but we have
3 reached -- in this specific one, I would also support
4 the motion that the fact that the assertion of an
5 error, the official decision of the Zoning
6 Administrator was not cleanly made, and certainly the
7 supportive data or case to base that claim of error is
8 not substantiated.

9 I want to appreciate everybody's comments
10 on this motion and I think that we spent, as all
11 cases, the amount of time necessary in order to fully
12 understand every perspective that is presented before
13 us and then to move ahead judiciously in the manner
14 that we are charged to do.

15 That being said, we do have a motion
16 before us. It has been seconded, and I would ask for
17 all those in favor of the motion to signify by saying
18 aye.

19 ALL: Aye.

20 CHAIRPERSON GRIFFIS: And opposed? And
21 any abstaining? Ms. Bailey, if you wouldn't mind
22 recording the vote.

23 MS. BAILEY: Mr. Chairman, the vote is 5-
24 0-0. The Board granted the motion of Decker
25 Development Company and DCRA to dismiss the appeal.

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1 CHAIRPERSON GRIFFIS: Very well. Thank
2 you all very much.

3 MS. BROWN: Thank you, Mr. Chairman.

4 CHAIRPERSON GRIFFIS: No further business
5 for the Board this afternoon in this case. Ms.
6 Bailey, is there any other business for the Board?

7 MS. BAILEY: No, Mr. Chairman, that's it.

8 CHAIRPERSON GRIFFIS: Very well. Let's
9 adjourn.

10 (Whereupon, the Public Hearing was
11 concluded at 2:48 p.m.)
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